Supreme Court, U. S.
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APPENDIX
Volume II – pages 311-653

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

Nos. 74-878
and 74-879

NATIONAL LEAGUE OF CITIES, *et al.* (in No. 74-878),
and STATE OF CALIFORNIA (in No. 74-879),
Appellants,

v.

HON. PETER J. BRENNAN, SECRETARY
OF LABOR OF THE UNITED STATES,
Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED JANUARY 17, 1975
PROBABLE JURISDICTION NOTED JANUARY 27, 1975

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METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY
DEPARTMENT OF LAW
204 COURTHOUSE
NASHVILLE, TENNESSEE 37201

November 4, 1974

Mr. Charles S. Rhyne
General Counsel
National Institute of Municipal Law Officers
839 - 17th Street, N. W.
Washington, D. C. 20006

Dear Mr. Rhyne:

This acknowledges receipt of your letter of October 15.

You asked if the Metropolitan Government would experience a large increase in costs for Firemen and Policemen due to the Fair Labor Standards Act. From the best estimates available, we have concluded that the annual costs in the early stages of the implementation of the Fair Labor Standards Act for Policemen and Firemen would amount to approximately $938,000.00. This computation is based on no increase in the present compensation. Obviously, the implementation of the Fair Labor Standards Act is going to have a serious financial impact on the Metropolitan Government of Nashville.

If we can be of further service to you, please advise.

Very truly yours,

/s/ Milton H. Sitton
Milton H. Sitton
Director of Law

Defendant's Exhibit No. 2

METROPOLITAN GOVERNMENT OF NASHVILLE
AND DAVIDSON COUNTY
DEPARTMENT OF LAW
204 COURTHOUSE
NASHVILLE, TENNESSEE 37201

November 25, 1974

Mr. Charles S. Rhyne
Rhyne & Rhyne
400 Hill Building
Washington, D.C. 20006

Dear Mr. Rhyne:

This refers to your letter of November 22 in which you enclosed rough drafts of the proposed complaint and brief to be filed in the U.S. District Court for the District of Columbia contesting the extension of the Fair Labor Standards Acts to governmental functions.

We note that you have shown Metropolitan Nashville, Tennessee; the correct legal name is The Metropolitan Government of Nashville and Davidson County, Tennessee. Please correct on the final complaint.

As you know, the Department of Labor has proposed definitions and rules for determing hours worked and what constitutes a work period with respect to employees of public agencies engaged in fire protection or law enforcement activities.

We have previously furnished you with an estimate of the financial impact that the Act will impose upon the operational costs of our Fire and Police Departments.

The proposed Rules, if enacted, would have a further effect on our Police Department and could affect the cost of operating our Fire protection. Section 553.8 of the proposed Rules, as we interpret same, would require the payment of overtime where a fireman or policeman is engaged by another public agency of some other state or political subdivision, or by a private employer and the work performed by the employee is not completely disassociated from his employment with the Metropolitan Government; for example, a policeman who is required to wear his uniform and performs services which would deter the commission of a crime; i.e., security guard at a bank. We estimate that 40% of our policemen work in positions requiring police authority. These police officers average at least 16 hours a week in this employment. If the proposed Rules become effective and we have interpreted the proposal correctly, it is possible that the Metropolitan Government would have to pay overtime on 16 hours a week. We estimate that this would cost us in round figures $19,000.00 per week, or a total of approximately $1,000,000.00 per year. This would seriously place a burden on the property taxpayers and might require the curtailment of some needed services.

Mr. Rick Bacigalupo asked for the above information. This, of course, is predicated on the approval of the proposed Rules.

Sincerely,

/s/ Edward W. McCabe
Edward W. McCabe
Deputy Director of Law

Defendant's Exhibit No. 3

International City Management Association

Management Information Service

SPECIAL
REPORT
JUNE 1974

The fair labor standards act: effects on fire overtime costs & staffing

Effective January 1, 1975, the federal Fair Labor Standards Act will apply to fire department and police department overtime practices. Many cities now are preparing budgets for the fiscal year July 1, 1974, through June 30, 1975. Also, many cities now are in the process of negotiating with representatives of firefighter or police groups. The new federal law may have very significant effects on both the budgeting plans of cities and negotiations of city management with police and fire groups.

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This special MIS report discusses problems and possible solutions in planning for the January 1, 1975, changes required by the Fair Labor Standards Act.

GOVERNMENT ADDED TO FLSA COVERAGE

Congress enacted a compromise version of the Fair Labor Standards Act placing federal, state, and local governments under the act on March 28, 1974. The President signed the bill on April 8, 1974, and it became effective May 1, 1974. Some changes in the new law will affect cities on January 1, 1975, and in subsequent years when the overtime provisions for fire and police take effect.

The Fair Labor Standards Act provides that the U.S. Secretary of Labor will issue a new regulation that will identify the policies and practices of the Department of Labor in regulating minimum wage and overtime provisions of the act for police and fire departments. It is not likely that the regulation will be issued by the Secretary until later in the summer of 1974 and almost certainly after July 1, 1974. As almost all cities that use a July 1 fiscal year must have completed budget preparations and negotiations with organized employee groups by that date, and as cities will not be able to know exactly what the Department of Labor regulations will be prior to July 1, this report is issued to help local government administrators plan in an uncertain area for the coming year. Local officials are specifically cautioned that the infor-

mation in this report may subsequently turn out to be inconsistent with the regulations to be issued later this year. When the Department of Labor regulation is issued, managers should obtain copies immediately and review local policy in comparison with the final regulation to make any additional policy changes necessary.

FIRE SUPPRESSION OVERTIME PRACTICES AND THE FLSA LAW

Effective January 1, 1975, fire overtime hours are mandated by federal law whenever hours on duty exceed an average of 60 hours per week, or 240 hours in 28 days, or any proportionate ratio of hours to days between 7 days and 28 days. Many cities in the United States presently have fire duty schedules averaging more than 60 hours per week. Any city will be free to continue to schedule firefighters for hours longer than an average of 60 per week. However, each such city will be required to pay overtime at time-and-one-half for hours worked over the 60 hours per week average.

A major unknown is whether, in calculating overtime hours, the Department of Labor will grant an exemption for sleeping and/or eating time for part of the hours spent in a fire duty period. Previous practice by the department has permitted an exemption of up to eight hours for sleeping time and additional hours for bona fide meal times which, if applied

in the fire service, could have the possible effect of exempting up to 11 hours out of a 24-hour duty period for the purpose of determining hours to be included in overtime calculations. A ruling by the Secretary of Labor regarding hours for which the minimum wage must be paid, issued in May 1974, requires that policemen and firefighters who are required to be on duty for 24 hours or less will use the Wage and Hour Division rule set forth in 29 C.F.R. 785.21. (This is the rule which previously applied to duty time of less than 24 hours.) Thus, for firemen with tours of duty of 24 hours or less, no time may be deducted for meals or sleeping. If this rule is extended and made permanent for calculations of overtime for firemen, it then would not be possible to exempt any sleeping or eating hours from overtime calculations. This report is written assuming the possibility that all scheduled hours will be counted for purposes of calculating overtime. Should the Secretary of Labor's regulations permit some exemptions for fire hours used for eating and/or sleeping, cities will have greater options in budgeting and negotiating with employee groups.

1975 REQUIREMENTS FOR FIRE OVERTIME

Effective January 1, 1975, overtime payment will be required for work over 60 hours average per week, or 240 hours in 28 days, or any proportionate ratio. For cities that use a 24-hour fire duty period, a "10-14" fire duty period, or a

"9-15" fire duty period, there are only two possible fire duty schedules between 7 and 28 days that are equivalent to an average of exactly 60 hours per week. In the examples listed, "X" equals a continuous 24-hour fire duty period. Most often a 24-hour fire duty period will begin at 8:00 a.m. and continue until 8:00 a.m. the following morning. An "0" indicates 24-hours off duty:

Five 24-Hour Fire Duty Periods in 14 Days
(60-Hour Average Fire Duty Week):

1	2	3	4	5	6	7	8	9	10	11	12	13	14
X	0	X	0	X	0	X	0	X	0	0	0	0	0

Ten 24-Hour Fire Duty Periods in 28 Days
(60-Hour Average Fire Duty Week):

1	2	3	4	5	6	7	8	9	10	11	12	13	14
X	0	X	0	X	0	X	0	X	0	X	0	X	0

15	16	17	18	19	20	21	22	23	24	25	26	27	28
X	0	X	0	X	0	0	0	0	0	0	0	0	0

These schedules would not necessarily be the exact ones that would be placed into effect by any given city. For example, on the five 24-hour-periods-in-14 cycle, it is not necessary to have five consecutive days off. On the ten 24-hour-periods-in-28 cycle, it is not necessary to have nine consecutive days off. However, normal scheduling of 24-hour fire duty periods provides for a 24-hour period off duty immediately following a 24-hour on-duty shift.

Many other options are possible in arranging five 24-hour fire duty periods in 14 days or ten 24-hour fire duty periods in 28 days. Two additional examples of each are shown below.

Five 24-Hour Fire Duty Periods in 14 Days
(60-Hour Average Fire Duty Week):

1	2	3	4	5	6	7	8	9	10	11	12	13	14
X	0	X	0	0	X	0	X	0	0	X	0	0	0

X 0 X 0 X 0 0 0 X 0 X 0 0 0

Ten 24-Hour Fire Duty Periods in 28 Days
(60-Hour Average Fire Duty Week):

1	2	3	4	5	6	7	8	9	10	11	12	13	14
X	0	X	0	X	0	X	0	X	0	0	0	0	0

X 0 X 0 X 0 0 0 0 X 0 X 0 X

15	16	17	18	19	20	21	22	23	24	25	26	27	28
X	0	X	0	X	0	X	0	X	0	0	0	0	0

0 0 0 0 X 0 X 0 X 0 X 0 0 0

Many combinations of on-duty and off-duty shifts are possible. The city administrator and fire chief should carefully structure the fire duty cycle to best meet the city's particular needs.

AVOIDING UNNECESSARY FIRE OVERTIME

City councils and local administrators no longer can afford the luxury of dele-

gating completely to fire departments the determination of the fire duty cycle. Any fire duty cycle less than seven days or more than 28 days in length will cost a city unnecessary overtime. For example, some cities presently have a fire duty cycle three days in length. This cycle calls for 24 hours on duty and 48 hours off duty prior to repeating. Even though this cycle is equivalent to an average of 56 hours per week, a city that maintains this particular cycle, beginning January 1, 1975, may be liable to pay unnecessary overtime every third week, as follows:

Three-Day Fire Duty Cycle

Sun.	Mon.	Tues.	Wed.	Thur.	Fri.	Sat.	
O	O	X	O	O	X	O	48 hrs.
O	X	O	O	X	O	O	48 hrs.
X	O	O	X	O	O	X	72 hrs.

In this example, in the first two weeks an individual firefighter would be on duty 48 hours each week, but in the third week he would be on duty for three 24-hour periods for a total of 72 hours. In that third week, the city would be liable to pay 12 hours of overtime at time-and-one-half. This kind of unnecessary overtime can be avoided by adopting a fire duty cycle at least seven days in length and not exceeding 28 days in length. Specific examples of duty schedules that can be adopted are listed in Table 1.

THE "10-14"

Fire groups have been able to legislate in some states the use of the 10-14 type of fire duty scheduling. The 10-14 basically is identical to a 24-hour period except that it is broken into two parts. Typically, the "day shift" is ten hours in length and most often begins at 8:00 a.m. and ends at 6:00 p.m. The day shift usually will include lunch, and usually sleeping is not permitted on this shift. The "night shift" is 14 hours in length, usually from 6:00 p.m. to 8:00 a.m., and includes dinner and sleeping time. Scheduled fire department activities, such as drills, are uncommon. Firefighters of course are on call to answer an alarm at any time throughout the day shift or night shift.

The 10-14 fire duty schedule requires an identical number of day shifts as night shifts. Basically, a 10-hour day shift and a 14-hour night shift are identical to a 24-hour fire duty period in terms of the amount of work-related hours and standby time. Typically, on either a 24-hour fire duty period or a 10-14, there is a maximum of eight hours of work-related activity and a minimum of 16 hours of standby time.

Examples of a 10-14 schedule that would average 60 hours per week over a 14-day or 28-day period are as follows:

D = day shift
(e.g., 8:00 a.m. to 6:00 p.m. -- 10 hours)

N = night shift
(e.g., 6:00 p.m. to 8:00 a.m. -- 14 hours)
O = off duty

(Text continued

Table 1

FIRE DUTY SCHEDULES FOR 1975

No. of Days in Fire Duty Schedule	Fire Duty Schedules	Average Fire Duty Week (Hours)	No. of 24-Hour Periods on Duty in Fire Duty Cycle
7	XOXOOOO	48	2 in 7
8	XOXOOOOO	42	2 in 8
9	XOXOXOOOO	56	3 in 9
	XOXOOOOOO	37.3	2 in 9
10	XOXOXOOOOO	50.4	3 in 10
	XOXOOOOOOO	33.6	2 in 10
11	XOXOXOOOOOO	45.8	3 in 11
12	XOXOXOXOOOOO	56	4 in 12
	XOXOXOOOOOOO	42	3 in 12
13	XOXOXOXOOOOOO	51.6	4 in 13
	XOXOXOOOOOOOO	38.7	3 in 13

No. of Days in Fire Duty Schedule	Fire Duty Schedules	Average Fire Duty Week (Hours)	No. of 24-Hour Periods on Duty in Fire Duty Cycle
14	XOXOXOXOOOOOOO	48	4 in 14
	XOXOXOXOXOOOOO	60	5 in 14
15	XOXOXOXOXOOOOOO	56	5 in 15
	XOXOXOXOOOOOOOO	44.8	4 in 15
16	XOXOXOXOXOOOOOOO	52.5	5 in 16
	XOXOXOXOOOOOOOOO	42	4 in 16
17	XOXOXOXOXOOOOOOOO	49.4	5 in 17
	XOXOXOXOXOXOOOOOO	59.3	6 in 17
18	XOXOXOXOXOXOOOOOOO	56	6 in 18
	XOXOXOXOXOOOOOOOOO	46.6	5 in 18
19	XOXOXOXOXOXOOOOOOOO	53.05	6 in 19
	XOXOXOXOXOOOOOOOOOO	44.21	5 in 19
20	XOXOXOXOXOXOXOOOOOOO	58.8	7 in 20
	XOXOXOXOXOXOOOOOOOOO	50.4	6 in 20
	XOXOXOXOXOOOOOOOOOOO	42.0	5 in 20

No. of Days in Fire Duty Schedule	Fire Duty Schedules	Average Fire Duty Week (Hours)	No. of 24-Hour Periods on Duty in Fire Duty Cycle
21	XOXOXOXOXOXOXOOOOOOOO	56.0	7 in 21
	XOXOXOXOXOXOOOOOOOOO	48.0	6 in 21
	XOXOXOXOXOOOOOOOOOO	40.0	5 in 21
22	XOXOXOXOXOXOXOOOOOOOO	53.45	7 in 22
	XOXOXOXOXOXOOOOOOOOO	45.81	6 in 22
23	XOXOXOXOXOXOXOXOOOOOOOO	58.43	8 in 23
	XOXOXOXOXOXOXOOOOOOOOO	51.18	7 in 23
	XOXOXOXOXOXOOOOOOOOOO	43.82	6 in 23
24	XOXOXOXOXOXOXOXOOOOOOOOO	56.00	8 in 24
	XOXOXOXOXOXOXOOOOOOOOOO	49.00	7 in 24
	XOXOXOXOXOXOOOOOOOOOOO	42.00	6 in 24
25	XOXOXOXOXOXOXOXOOOOOOOOO	53.76	8 in 25
	XOXOXOXOXOXOXOOOOOOOOOO	47.04	7 in 25
	XOXOXOXOXOXOOOOOOOOOOO	40.32	6 in 25
26	XOXOXOXOXOXOXOXOOOOOOOOO	58.15	9 in 26
	XOXOXOXOXOXOXOXOOOOOOOOOO	51.69	8 in 26
	XOXOXOXOXOXOXOOOOOOOOOOO	45.23	7 in 26

No. of Days in Fire Duty Schedule	Fire Duty Schedules	Average Fire Duty Week (Hours)	No. of 24-Hour Periods on Duty in Fire Duty Cycle
27	XOXOXOXOXOXOXOXOXOOOOOOOOOO	56.00	9 in 27
	XOXOXOXOXOXOXOXOOOOOOOOOOOO	49.77	8 in 27
	XOXOXOXOXOXOXOOOOOOOOOOOOOO	43.55	7 in 27
28	XOXOXOXOXOXOXOXOXOXOOOOOOOOO	60.0	10 in 28
	XOXOXOXOXOXOXOXOXOOOOOOOOOOO	54.0	9 in 28
	XOXOXOXOXOXOXOXOOOOOOOOOOOOO	48.9	8 in 28
	XOXOXOXOXOXOXOOOOOOOOOOOOOOO	42.0	7 in 28

BEST COPY AVAILABLE

60-Hour Average Fire Duty Schedule
"10-14" Shifts, 7- Through 28-Day Cycle

In the schedules below, assume that the schedule begins at 8:00 a.m.

14-Day Fire Duty Cycle (60-Hour Average)

1		2		3		4		5		6		7	
D	N	D	N	D	N	D	N	D	N	D	N	D	N
D	O	D	O	D	O	D	O	O	O	O	O	O	O

8		9		10		11		12		13		14	
D	N	D	N	D	N	D	N	D	N	D	N	D	N
O	N	O	N	O	N	O	N	O	N	O	O	O	O

28-Day Fire Duty Cycle (60-Hour Average)

1		2		3		4		5		6		7	
D	N	D	N	D	N	D	N	D	N	D	N	D	N
D	O	D	O	D	O	D	O	D	O	O	O	O	O

8		9		10		11		12		13		14	
D	N	D	N	D	N	D	N	D	N	D	N	D	N
O	N	O	N	O	N	O	N	O	N	O	O	O	O

15		16		17		18		19		20		21	
D	N	D	N	D	N	D	N	D	N	D	N	D	N
D	O	D	O	D	O	D	O	D	O	O	O	O	O

22		23		24		25		26		27		28	
D	N	D	N	D	N	D	N	D	N	D	N	D	N
O	N	O	N	O	N	O	N	O	N	O	O	O	O

DOL SURVEY OF 1975 FIRE DUTY HOURS

The Department of Labor will conduct a survey in 1976 to ascertain fire duty hours used by cities during the calendar year 1975. Local government administrators should insure that adequate records are kept of fire duty hours, cycles, and schedules of uniformed fire personnel during the calendar year 1975. The law passed by Congress requires the Secretary of Labor to use the information gathered on hours actually served on duty to determine administratively the maximum number of hours over which fire overtime will be paid beginning January 1, 1978.

Administrators can anticipate substantial demands by fire groups to lower fire hours for the calendar year 1975. The lower the average of fire duty hours is determined to be in 1975, the lower the hours over which overtime payment will be required for firefighters beginning in 1978. It is possible that beginning in 1978 the Secretary of Labor could determine that overtime will be required over 54 hours per week (as in 1977) or over a number of hours less than 54 hours per week. City administrators and city councils should recognize that reduction of fire duty hours in 1975 will affect significantly the number of hours over which overtime must be paid beginning in 1978. It is theoretically possible that the Secretary of Labor could determine that 52, 50, 48, 46, 44, 42 or even 40

hours per week--the goal of firefighter groups--could be established as the number of fire hours per week over which overtime must be paid.

1976 REQUIREMENTS FOR FIRE OVERTIME

Effective January 1, 1976, cities will be required to pay overtime for any hours over 58 per week, or 232 hours in 28 days. Therefore, to avoid overtime payments, cities using a 60-hour schedule will need to revise the schedule.

With the 24-hour fire duty period, the 10-14 period, or the 9-15 period, there are no fire duty schedules possible that are equivalent to 58 hours using a cycle of seven days through 28 days. The next lowest fire duty schedule possible arithmatically between seven days and 28 days is a 56-hour average schedule. The practical effect of the law enacted by Congress is to require a 56-hour schedule starting in 1976 rather than a 58.

A 56-hour fire duty schedule basically involves being on duty one-third of the time and being off duty two-thirds of the time. The basic ratio is simple: one on-duty hour or one on-duty day out of three. Therefore, to obtain a permissible schedule, it is necessary to devise a ratio of fire duty schedules using cycles of duties divisible by three. Between seven and 28 days, there are seven options of schedules as follows:

56-Hour Fire Duty Schedules
Between 7 Days and 28 Days

Three 24-hour periods in 9:
XOXOXOOOO

Four 24-hour periods in 12:
XOXOXOXOOOOO

Five 24-hour periods in 15:
XOXOXOXOXOOOOOO

Six 24-hour periods in 18:
XOXOXOXOXOXOOOOOOO

Seven 24-hour periods in 21:
XOXOXOXOXOXOXOOOOOOOO

Eight 24-hour periods in 24:
XOXOXOXOXOXOXOXOOOOOOOOO

Nine 24-hour periods in 27:
XOXOXOXOXOXOXOXOXOOOOOOOOOO

The lower the number of hours per fire duty week, the greater the variety of options in scheduling fire duty periods. Within each of the schedules shown above, a great variety of arrangements of on-duty periods and off-duty periods can be utilized. For example, a common optional scheduling of the four 24-hour duty periods in a 12-day cycle is as follows: XOXOOXOXOOOO.

Cities should avoid a 56-hour average duty cycle less than seven days in length or greater than 28 days in length in order to

avoid paying unnecessary overtime. Therefore, cities should not use a day cycle of 1 in 3 or 2 in 6, such as:

1	2	3
X	O	O

1	2	3	4	5	6
X	O	X	O	O	O

If these schedules are used, 18 hours of unnecessary overtime every third week may have to be paid for every firefighter--equivalent to six hours unnecessary overtime cost per week per firefighter. This would result in unnecessary overtime cost of 10.7 percent of the fire salary budget. Similarly, the use of a 56-hour schedule greater than 28 days will result in unnecessary overtime costs. Such schedules would be: ten 24-hour fire duty periods in 30 days, eleven 24-hour fire duty periods in 33, twelve 24-hour fire duty periods in 36 days, etc.

1977 FIRE OVERTIME REQUIREMENTS

Effective January 1, 1977, the Fair Labor Standards Act will require the payment of overtime for hours in excess of 54 hours per week, or 216 hours in 28 days. Only one schedule exactly fits this description. This is a schedule of nine 24-hour fire duty periods in 28 days, or nine 10-hour day shifts and nine 14-hour night shifts in 28 days. (Nine 24-hour fire duty periods equal 216 hours.)

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
X	O	X	O	X	O	X	O	X	O	X	O	X	O	X	O

17	18	19	20	21	22	23	24	25	26	27	28
X	O	O	O	O	O	O	O	O	O	O	O

"10-14"

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
D	D	D	D	D	O	O	N	N	N	N	N	O	O	D	D

17	18	19	20	21	22	23	24	25	26	27	28
D	D	O	O	N	N	N	N	O	O	O	O

Again, the above examples of 24-hour or 10-14 fire duty schedules for a 54-hour week may be rearranged in other ways. Managers and fire chiefs should be aware, however, that the 9-in-28 fire duty cycle is the only cycle that will yield an average duty week of 54 hours. Any other fire duty cycle will result in payment of unnecessary overtime or in the use of a duty schedule that averages less than 54 hours per week.

1978 REQUIREMENTS FOR FIRE OVERTIME

Effective 1, 1978, the Secretary of Labor is required by law to determine, based on the Department of Labor's survey to be made in 1976 of fire hours used in 1975, whether overtime shall continue to be paid for hours over 54 hours per week or whether a lower figure is required. If the Secretary of Labor determines that a lower figure is required, city administrators and fire chiefs should review carefully the duty schedule that then would have to be placed into effect.

The advent of Fair Labor Standards Act coverage to cities will require all persons concerned with fire suppression duty hours to think ahead not simply for one year but for the next four years. As the fire duty schedule hours over which overtime must be paid are reduced in 1975, 1976, 1977, and potentially in 1978, the great majority of fire duty schedules in American cities will have to be revised to accommodate the annually changing law and regulations. Even cities that presently have fire duty schedules significantly lower than the 60-hour limit that will go into effect on January 1, 1975, may find it necessary to review their schedules to avoid payment of unnecessary overtime. This is because many cities presently have fire duty cycles that repeat in fewer than seven days or repeat in a number of days larger than 28. It becomes necessary, therefore, for each city to determine exactly what the present practice is within the fire department in scheduling and using fire duty hours.

FIRE DUTY PERIOD

The city administrator should determine what is currently the exact practice as to the length of the fire duty period. Is the fire duty period 24 hours in length? When does it start and end? On occasion, city officials and city councils have been misled by schedules that show 16 hours one day and eight hours on the succeeding day. While technically correct in terms of a 24-hour calendar day,

such schedules usually involve 24 continuous fire duty hours from 8:00 a.m. one day until 8:00 a.m. the succeeding day.

FIRE DUTY CYCLE

City administrators should determine the exact fire duty cycles. Determination should be made to ascertain exactly how the fire duty schedule operates. A fire duty cycle can be as short as two days or as long as the entire calendar year. Some fire duty cycles may even require two or three years before repeating. Most do not exceed a period of 60 days, but many do. If the fire duty cycle is less than seven days or greater than 28 days in length, the cycle should be adjusted to be between seven days and 28 days in length in order to avoid the payment of unnecessary overtime. In devising an appropriate fire duty cycle when using a 10-14 or 9-15 schedule, there must be an identical number of day shifts as night shifts within the cycle.

"PAY BACKS"

Managers should determine whether the fire duty schedule includes "pay-backs." A pay-back is an on-duty period which a firefighter owes the city in addition to the duty periods in his regular day cycle. Pay-backs may be scheduled or unscheduled (e.g., sick leave, relief). When computing the average duty week, the number of pay-backs for each firefighter must be included in the total number of duty periods scheduled per week.

As an example, city X has a 60-hour fire duty week. However, the city is using a three-platoon schedule. The fire duty cycle is three 24-hour on-duty periods out of nine days. In this city, if the firefighters did not pay back any 24-hour duty periods in a year, they would have a 56-hour average duty week. On a 56-hour schedule, a firefighter will be scheduled to be on duty about 122 times per year. On a 60-hour average duty schedule, he will be scheduled to be on duty about 130 times a year. If the firefighter in this example is regularly scheduled to be on duty only 122 times, he must be scheduled, in addition, to serve eight more (pay-back) 24-hour periods in order to serve an average of 60 hours per week.

Some of the reasons pay-backs are used include ease of scheduling (a three-platoon system is easier to schedule than a two-platoon system with many subsections) and the fact that pay-backs enable fire administrators to have greater flexibility in covering time off, vacation, and sick leave. If pay-backs are used, it is important for city administrators to learn specifically when the on-duty periods firefighters owe the city actually are paid back. The new FLSA law probably will force the elimination of pay-back scheduling because of potential overtime liability.

PAID TIME OFF

Fire departments often grant paid time off to uniformed firefighters for holidays,

sick leave, injuries, and other purposes. Holidays many times are not granted directly but indirectly through the use of the fire duty schedule. As there is no standard practice in the granting of vacation, sick, or other paid leave, it is important in auditing fire duty schedule practices for city administrators to determine exactly in what units vacation, sick leave, and other paid time off may be taken. For example, is a day of vacation considered to be 8 hours, 10 hours, 12 hours, 14 hours, 24 hours, or what? Similarly, how many hours are credited to use as a day of sick leave? City administrators should determine how many 24-hour fire duty periods or 10-14 hour periods actually are scheduled per week and, secondly, how many of the duty periods hit on holidays. This information is absolutely necessary in planning for fire duty schedule changes which a city may need to make in planning for the impact of the FLSA on January 1, 1975, and succeeding years.

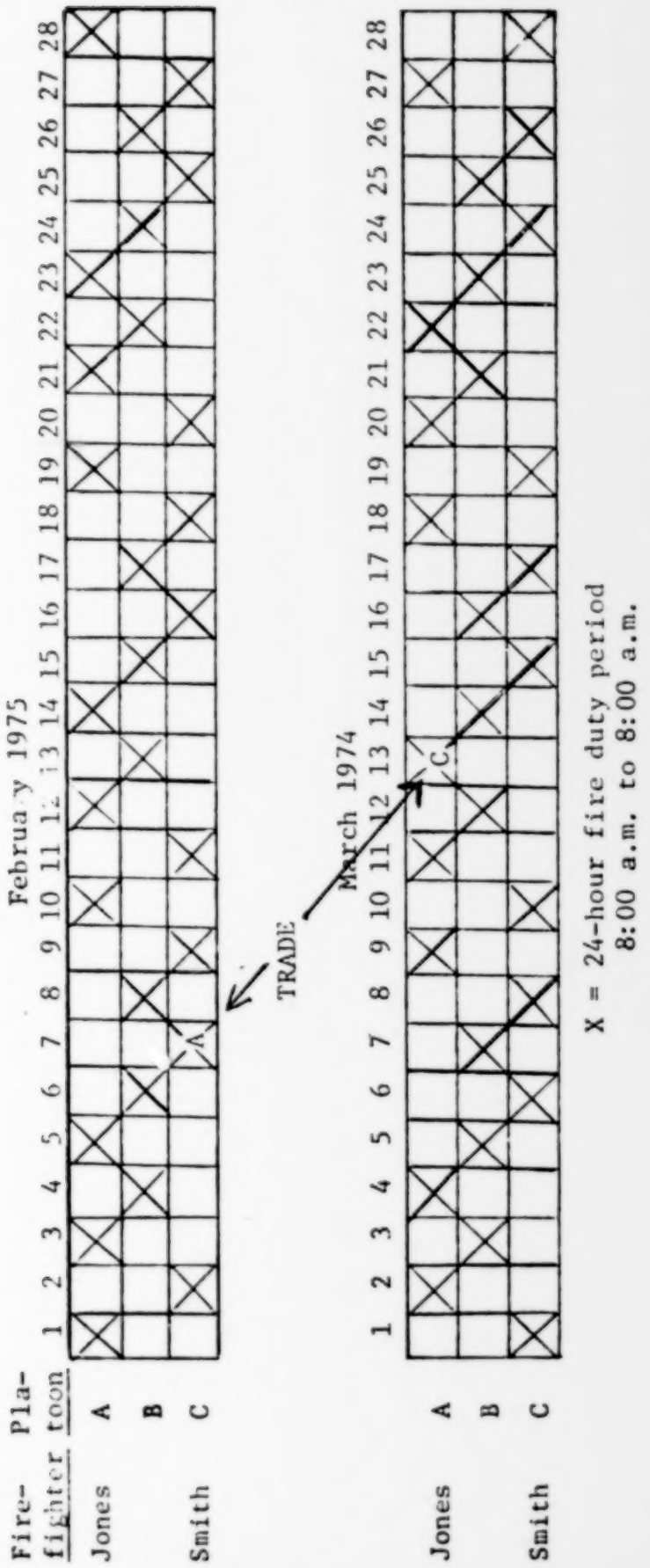
SHIFT TRADES

Firefighters assigned to fire suppression activity rarely come to work, on the average, more than three times per week. Fire duty schedules, because of the infrequency of periods on duty, permit a practice which is perhaps unique to the fire service--"shift trading." Typically, a firefighter on one platoon will "trade" one or more duty periods with a firefighter on another platoon. This practice enables individual firefighters occasionally to obtain a longer number of consecutive days off than the regular fire duty schedule otherwise would provide.

A very simplified example of shift trading is shown in the table at the top of page 10. In the example, assume two consecutive 28-day periods. For ease of identification, assume these to be February 1, to 28, 1975, and March 1 to 28, 1975. The fire duty period is 24 consecutive hours. The fire duty cycle is nine days in length. There are three platoons--A, B, and C. There are three scheduled 24-hour duty periods in every nine days, as follows: XOXOXOOOO. The average fire duty week is 56 hours--less than the 60-hour maximum mandated effective January 1, 1975.

Assume that firefighter Jones on A platoon has arranged a shift trade with firefighter Smith on C platoon. On February 7, the C platoon is scheduled to be on duty, and therefore firefighter Smith would be on duty. However, on February 7, firefighter Smith's shift is served by firefighter Jones, and firefighter Smith does not come to work that day. Instead, firefighter Smith has six consecutive days off between the end of the shift at 8:00 a.m., February 3, and the beginning of the shift at 8:00 a.m., February 9. This does not count as time off for vacation.

On March 13, the A shift is scheduled to be on duty. Therefore, firefighter Jones is scheduled to be on duty. However, on March 13, firefighter Smith serves in firefighter Jones' place and "repays" the shift trade. Firefighter Jones therefore



has six consecutive days off from the end of the shift at 8:00 a.m., March 13, to the beginning of the shift at 8:00 a.m., March 18. This does not count as time off for vacation.

In this example, two firefighters have each worked one 24-hour fire duty period on another platoon's schedule. They also have worked in such a way as potentially to be able to claim overtime under the new law. Each took time off in one 28-day "work period" and worked an additional 24-hour duty period in a different work period of 28 days. This may require the city as the employer to pay overtime to each firefighter--even though the shift trades were for the convenience of the employees involved and of no benefit to the employer.

In this example, each firefighter worked an extra 24 hours on duty in the 28-day work period. The fire schedule is an average of 56 hours per week. Therefore, in 28 days (four weeks) the federal law would assume an on-duty schedule of 4 x 56 hours or 224 hours worked.

On-duty schedule	224 hours
Shift trade "overtime"	24 hours
	248 total hours worked

Total hours worked 248

1975 fire overtime law -240

8 hours overtime at 1-1/2 equals 12 hours pay due to firefighter Smith and to firefighter Jones.

The Department of Labor regulations to be issued will contain provisions as to whether shift trades will penalize employers who permit them.

SHIFT TRADE RECOMMENDATIONS

Each city should identify its own practice in permitting shift trades. Some fire departments have no formal restrictions concerning this matter; others have stringent regulations. Some departments forbid shift trades. A city that ignores this matter may later find that it has incurred substantial overtime liability once the new law becomes operative on January 1, 1975. Probably shift trades that occur within a given 28-day work period will not require payment of unnecessary overtime. In the example, if firefighter Smith on C platoon had traded with firefighter Jones on A platoon within the 28 days in February (the 28-day work period), each firefighter would have served the same number of 24-hour duty periods as he would have on his regular platoon schedule. The problem will arise when firefighters trade shifts over periods of time beyond the 28-day work period.

City administrators and fire chiefs may well be advised to plan to withhold shift trade privileges for 1975, or to restrict shift trades within 28-day work periods, pending the issuance of the Department of Labor regulation on the subject. If shift trades are subject to negotiation with firefighter employee groups, persons responsible for negotiating for city management should consider either (1) stopping the practice of shift trades, (2) restricting shift trades to require prior approval of management to avoid payment of unnecessary overtime, or (3) leaving an "opener" in the agreement pending the DOL regulation being issued.

THE POTENTIAL FIRE OVERTIME "BOOBY TRAP"

In addition to all the problems of fire service costs and staffing that have been discussed in this report, there remains at least one unknown but possibly very expensive fire overtime problem that may occur because of the new federal law.

Section 7(a)(1) of the Fair Labor Standards Act states:

> "Except as otherwise provided in this section, no employer shall employ any of his employees...for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

The newly added Section 7(k) for police and firemen states:

"No public agency shall be deemed to have violated subsection (a) with respect to the employment of any employee in fire protection activities...if (emphasis added)

"(1) in a work period of 28 consecutive days the employee receives for tours of duty which in the aggregate exceed 240 hours; or

"(2) in the case of such an employee to whom a work period of at least 7 but less than 28 days applies, in his work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his work period as 240 hours bears to 28 days,

"compensation at a rate not less than one and one-half times the regular rate at which he is employed."

The term "work period" used in the new Section 7(k) above has a special meaning. Every employer covered by the act must declare what is the work period; that is, the days for record-keeping purposes in which the number of work hours will be counted. For almost all employers, the work period is seven days; the employer specifies at what point in the week the work period begins and ends (e.g., 12:01 a.m. Sunday through midnight Saturday; or 8:00 a.m. Monday through 7:59 a.m. Monday, etc.).

The new Department of Labor regulation will spell out what is meant by "work period" for firefighters. Cities may have many options in declaring what is the work period because of the provisions of Section 7(k)(2) above, which enable cities to use ratios in determining average fire hours per week. Therefore, a permissible work period might be 7 days, 8 days, 9 days, 10 days...27 days, 28 days. A city that fails to declare a work period potentially is very vulnerable to substantial "booby trap" unnecessary overtime costs, particularly a city that fails to readjust its fire duty cycle schedule to be between seven days and 28 days.

For example, assume a city now has a 56-hour average fire duty week. It uses a 24-hour fire duty period. It has three platoons. The duty cycle is three days. The duty schedule is 24 hours on-duty and 48 hours off-duty (X 0 0). Assume that January 1, 1975, comes and goes and the city has not changed its schedule or declared a work period for firefighters. Firefighters continue to work the same fire duty schedule in the year 1975 as in 1974. After a period of time, the booby trap explodes: City officials learn that the city is liable for overtime costs for time over 40 hours for every third week that firefighters have worked on the old schedule.

Where did this booby trap come from? The trap is the little word "if" in Section 7 (k). Section 7(k) is an exemption from the 40-hour week and from paying time-and-

one-half for hours worked over 40. In order to obtain the exemption, cities must comply with the provisions of Section 7 (k). Section 7(k) states that a city must pay a firefighter at time-and-one-half for hours worked over 60 hours in a work period of seven days, 240 hours in a work period of 28 days, or the same ratio to the number of consecutive days in his work period as 240 hours bears to 28 days.

If a city does not pay a firefighter time-and-one-half for hours worked in excess of 60 in a seven-day work period, etc., the city has not met the test of the exemption of Section 7(k) and, therefore, will be held in violation of Section 7(a) for the given work period. Section 7(a) requires overtime for work over 40 hours in seven days at time-and-one-half.

What would this mean for the city with the three-day fire duty cycle which has not declared its work period? Probably, on receiving a complaint from the firefighters' union or employee organization, or from individual firefighters, the Wage and Hour Division would conduct an audit of the city's wage and hour records. The Wage and Hour staff persons would find that every third week each firefighter was on duty three 24-hour shifts: XOOXOOX. Therefore, each firefighter served in those weeks 72 hours. As the firefighters were not paid overtime for work over 60 hours in each of these weeks, the city's exemption does not apply--and the city will be required to pay time-and-one-half for hours over 40!

72 hours every third week
-40 hour requirement (the booby trap)

32 hours overtime
x 1.5

48 hours overtime for each week

As the salary probably would be computed on a 40-hour basis, this could amount to more than double pay for every week in which this situation occurred! This could amount to more than a 40 percent of payroll cost for back overtime claims filed for a period of one year. A city with a $10 million fire salary payroll, for example, could find itself ordered to pay back overtime of $4 million. If "liquidated damages" were assessed (double costs), the bill could be $8 million. And all for firefighters on a fire duty schedule of less than the maximum required by law!

The new Department of Labor regulations will detail how to keep records, how to determine work period, and, in effect, how to deactivate the Section 7(a) booby trap.

THE WAGE AND HOUR DIVISION,
DEPARTMENT OF LABOR

The Department of Labor maintains regional and area offices throughout the United States. A list of these offices appears in the appendix.

Staff members of the Wage and Hour Division are available to assist city officials in any way possible to understand and to

comply with the law. City officials are advised to contact Wage and Hour offices to obtain answers to specific questions concerning the Fair Labor Standards Act.

It is the apparent intention of the Department of Labor to treat cities like any other employer, except where Congress has provided that special regulations are needed. Except in the new coverage provided in Section 7(k) for police and fire personnel, it is expected that almost all other provisions of the act will apply to cities as they have in the past to private employers. The Department of Labor Wage and Hour Division will make available to cities copies of DOL regulations that cities will need to observe.

Wage and Hour Division staff members at the national, regional, and area offices have been very helpful to city officials seeking information and assistance. Managers, fire chiefs, and other concerned with the special provisions of the law pertaining to fire or police overtime or other provisions and regulations of the act should contact the Department of Labor offices for help.

MIS REPORT TO BE ISSUED

This report is intended to help city administrators become aware of many of the problems raised by the new federal legislation. As the Department of Labor regulations pertaining to overtime will not be issued until the summer of 1974, many answers cannot now be provided to questions that city administrators and

fire chiefs may have. This report is intended, however, to serve as a guide in planning for budgeting and negotiating based upon the latest available information. By January 1975 a revised and updated MIS report will be issued on fire duty schedules and staffing for fire departments considering the impact of FLSA. By that time, the final Department of Labor regulations will have been issued, and much more specific information will be available for publication. In the meantime, the International City Management Association will present to the Department of Labor relevant statistics on duty hours of firefighters.

This special MIS report has been prepared to provide local government administrators with guidelines for avoiding unnecessary overtime costs for fire service under provisions of the recently enacted Fair Labor Standards Act.

The report was prepared by William F. Danielson, Director of Personnel for the City of Sacramento, California. Mr. Danielson formerly served as Director of Personnel for Berkeley, California. He has extensive experience in advising local governments on fire duty schedules and staffing and has authored an earlier MIS report on the topic.

Appendix

WAGE-HOUR AREA DIRECTORS

Atlanta Region

Birmingham, Ala.--Hansel J. Hunter, 1931 Ninth Avenue South, Birmingham 35202
Mobile, Ala.--Charles A. Roberts, P.O. Box 4396, Mobile 36604
Montgomery, Ala.--Dalton O. Blake, 421 S. McDonough Street, Montgomery 36104
Fort Lauderdale, Fla.--Area Director, Romark Building - Room 215, 3521 West Broward Boulevard, Fort Lauderdale 33312
Jacksonville, Fla.--Labon F. Chappell, Jr., 3947 Boulevard Center Drive - Suite 121, Jacksonville 32207
Miami, Fla.--Area Director, 1150 S.W. 1st Street - Room 202, Miami 33130
Orlando, Fla.--William C. Truman, P.O. Box 8024A, 22 West Lake Beauty Drive, Orlando 32806
Tampa, Fla.--Delbert L. Coleman, Mills Building - Suite 110, 5410 Mariner Street, Tampa 33609
Atlanta, Ga.--Le Roy Reid, Citizens Trust Building - Room 1100, 75 Piedmont Avenue, Atlanta 30303
Columbus, Ga.--Robert E. Lamb, P. O. Box 1717, Columbus 31902
Savannah, Ga.--William A. Savage, P. O. Box 8046, Wright Square Station, Savannah 31402
Lexington, Ky.--Ernest C. Orr, Fuller Building - Room 118, 120 W. Second, Lexington 40507
Louisville, Ky.--Richard D. Robinette, 187-E. Federal Building, 600 Federal Place, Louisville 40202

Charlotte, N.C.--Fred A. Carlock, BSR Building - Room 401, 316 E. Morehead Street, Charlotte 28202
Greensboro, N.C.--Raymond G. Cordelli, P.O. Box 2220, Greensboro 27402
Raleigh, N.C.--Area Director, P.O. Box 27486, Raleigh 27611
Columbia, S.C.--Richard F. Gardner, Room 105-C, Liberty House, 2001 Assembly Street, Columbia 29201
Jackson, Miss.--Joseph C. Massey, Room 675 Milner Building, 210 South Lamar Street, Jackson 39201
Knoxville, Tenn.--Lillard Trice, P. O. Box 631, Knoxville 37901
Memphis, Tenn.--Area Director, 486 Federal Office Building, 167 North Main Street, Memphis 38103
Nashville, Tenn.--Claiborne W. Carden, 1720 West End Building - Room 610, 1720 West End Avenue, Nashville 37203

Boston Region

Hartford, Conn.--John J. Reardon, 305 Post Office Building, 135 High Street, Hartford 06101
Portland, Maine--Philip Schilling, P. O. Box 211, Portland 04112
Boston, Mass.--William L. Smith, 38 Chauncy Street - Room 912, Boston 02111
Springfield, Mass.--James F. Coakley, Room 340 - Federal Building, 436 Dwight Street, Springfield 01103
Providence, R.I.--John S. Dawber, 210-212 John E. Fogarty Federal Building, 24 Weybosset Street, Providence 02903

Chicago Region

Chicago, Ill.--Herbert A. Goldstein, 4030 North Milwaukee Avenue, Chicago 60641
Chicago, Ill. - South--Daniel P. New, 2222 West 95th Street, Chicago 60643
Springfield, Ill.--Henry Neuhaus, Federal Building - Room 25, 600 E. Monroe Street, Springfield 64701
Indianapolis, Ind.--Kenneth J. Graue, Ohio and Pennsylvania Streets, Room 409, Federal Building, Indianapolis 46204
South Bend, Ind.--Area Director, 103 West Wayne Street, Commerce Building - Room 406, South Bend 46601
Detroit, Mich. - East--Arthur H. Buchman, 16641 East Warren Avenue, Detroit 48224
Detroit, Mich. - West--Frank C. Modetz, 14740 Plymouth Road, Detroit 48227
Grand Rapids, Mich.--Gordon L. Claucherty, Room 134, Federal Building and U.S. Courthouse, 110 Michigan Street, N.W., Grand Rapids 49502
Minneapolis, Minn.--Phillip Granquist, 110 South 4th Street, Room 396 - Federal Building, Minneapolis 55401
Cincinnati, Ohio--Glen A. Fierst, 550 Main Street, Federal Office Building - Room 1010, Cincinnati 45202
Cleveland, Ohio--Robert F. Pietrykowski, 1240 E. 9th Street - Room 817, Federal Office Building, Cleveland 44199
Columbus, Ohio--Karl A. Jemison, 700 Bryden Road, 213 Bryson Building, Columbus 43215
Madison, Wis.--Jerome H. Estock, 303 Price Place, Room 114, Lincoln Building, Madison 53705
Milwaukee, Wis.--Edmund Shedd, 741 N. Milwaukee Street, 535 Grain Exchange Building, Milwaukee 53202

Dallas Region

Little Rock, Ark.--Bill D. Guse, Room 3527 Federal Office Building, 700 West Capitol Avenue, Little Rock 72201
Baton Rouge, La.--Donald E. Zimpfer, Room 216-B, Hoover Building, 8312 Florida Boulevard, Baton Rouge 70806
New Orleans, La.--Thomas B. Killeen, Room 632, Federal Building, 600 South Street, New Orleans 70130
Albuquerque, N.M.--Willie G. Thurman, P.O. Box 1869, Albuquerque 87103
Oklahoma City, Okla.--Shirley C. Thorne, Room 210, Post Office Building, 3rd and Robinson Streets, Oklahoma City 73102
Tulsa, Okla.--Bill M. Hamilton, Room 3014, Federal Building, 333 West Fourth Street, Tulsa 74103
Dallas, Tex.--Edgar M. Wiemar, Room 1A3, Federal Building, 1100 Commerce Street, Dallas 75202
El Paso, Tex.--William C. Calvit, Suite 1103, Mills Building, 303 North Oregon Street, El Paso 79901
Fort Worth, Tex.--L. C. Chandler, 819 Taylor Street - Room 7A12, Fort Worth 76102
Harlingen, Tex.--Alfred A. Ramsey, P.O. Box 1147, Harlingen 78550
Houston, Tex. - East--Karle G. Berg, 2320 LaBranch, Room 2103, Houston 77004
Houston, Tex. - West--William H. Lemons, Jr., 2320 LaBranch Street - Room 2101, Houston 77004
San Antonio, Tex.--Harry B. Nunn, Jr., 403 Kallison Building, 434 South Main Avenue, San Antonio 78204
Waco, Tex.--Ben W. Ferrell, 621 Citizen's Tower, Fifth and Franklin Streets, Waco 76701

Denver Region

Denver, Colo.--Wilbur J. Olson, 228 U.S. Custom House, 721-19th Street, Denver 80202
Salt Lake City, Utah--Area Director, 3207 Federal Building,125 South State Street, Salt Lake City 84138

Kansas City Region

Des Moines, Iowa--Paul A. Lynn, 638 Federal Building, 210 Walnut Street, Des Moines 50309
Wichita, Kans.--Walter S. Gick, 411 Beacon Building, 114 South Main, Wichita 67202
Kansas City, Kans.--Rex L. Wayman, 241 U.S. Courthouse, 811 Grand Avenue, Kansas City 64106
St. Louis, Mo.--Jack R. Younce, 210 North 12th Boulevard - Room 563, St. Louis 63101
Omaha, Nebraska--Floyd L. Wilson, 2118 Federal Building, 215 North 17th Street, Omaha 68102

New York Region

Newark, N.J.--Area Director, 870 Broad Street - Room 836, Newark 07102
Paterson, N.J.--Leonard R. Jacoby, 133 Ellison Street, Paterson 07505
Trenton, N.J.--Area Director, 143 East State Street, Trenton 08608
Albany, N.Y.--Julius R. Chenu, 41 State Street, Albany 12207
Brooklyn, N.Y.--Joseph Shaffer, 271 Cadman Plaza East - Room 631, Brooklyn 11201
Bronx, N.Y.--Abraham Klainbard, 881 Gerard Avenue - Room 4, Bronx 10452

Buffalo, N.Y.-- Edward J. McNamara, 617 Federal Building, 111 West Huron Street, Buffalo 14202
Hempstead Long Island, N.Y.--Joseph F. Gorga, Street Floor, 159 North Franklin Street, Hempstead 11550
New York, N.Y.--Area Director, 26 Federal Plaza - Room 2946, New York 10007
Hato Rey, Puerto Rico--Pedro Montes-Herdandez, Pan Am Building - Suite 310 255 Ponce de Leon Avenue, Hato Rey 00917
Mayaguez, Puerto Rico--Eddie Bonar-Antonetti, Americo Marin Building, 105 East Mendez Vigo Street, Mayaguez 00708

Philadelphia Region

Baltimore, Md.--Hillard Curland, 1022 Federal Office Building, 31 Hopkins Plaza, Charles Center, Baltimore 21201
Hyattsville, Md.--Area Director, Suite 904 Presidential Building, 6525 Belcrest Road, Hyattsville 20782
Harrisburg, Pa.--David Feinberg, Federal Building - Room 74, 228 Walnut Street, Box 1005, Harrisburg 17108
McKeesport, Pa.--Area Director, 224 Fifth Avenue, Room 205, McKeesport 15132
Philadelphia, Pa.--Theodore M. Rogers, 600 Arch Street - Room 4244, Philadelphia 19106
Pittsburgh, Pa.--Area Director, 702 Federal Building, 1000 Liberty Avenue, Pittsburgh 15222
Wilkes-Barre, Pa.--Jack R. Elliott, 602 Wyoming Valley, Veterans Building, 19 North Main Street, Wilkes-Barre 18701

Richmond, Va.--Robert F. Ferguson, Jr., 7000 Federal Building, 400 North 8th Street, Richmond 23240
Roanoke, Va.--David E. Pickard, 609-13 Peoples Federal Building, 101 S. Jefferson Street, Roanoke 24011
Charleston, W.Va.--Eldon F. Spurlock, 22 Capitol Street, Charleston 25301

San Francisco Region

Phoenix, Ariz.--John Breen, Park Plaza Building, 1306 North 1st Street, Phoenix 85004
Hollywood, Calif.--Robert C. Sturgis, Room 504, 6777 Hollywood Boulevard, Hollywood 90028
Los Angeles, Calif.--Carl M. Oelrich, 7717 Federal Building, 300 North Los Angeles Street, Los Angeles 90012
Sacramento, Calif.--John F. Cooper, 8410 Federal Building and U.S. Courthouse, 650 Capitol Mall, Sacramento 95814
San Francisco, Calif.--Patricia H. Mills, 409 Phelan Building, 760 Market Street, San Francisco 94102
Whittier, Calif.--Theodore Revak, Main Floor, 7238 South Painter Avenue, P. O. Box 81, Whittier 90602
Honolulu, Hawaii--Thomas N. Moriki, 1833 Kalakaua Avenue - Room 614, Honolulu 96815

Seattle Region

Portland, Oreg.--Donald W. Henry, 528 Pittock Block, 921 S.W. Washington Street, Portland 97205
Seattle, Wash.--Eugene T. Kord, Room 1821 Smith Tower, 506 Second Avenue, Seattle 98104

Defendant's Exhibit No. 4

NATIONAL LEAGUE OF CITIES
UNITED STATES CONFERENCE OF MAYORS
July 5, 1974

Warren D. Landis, Administrator
Wage and Hour Division
Department of Labor
711 14th Street, N.W.
Room 1107
Washington, D.C. 20210

Dear Warren:

Attached, as promised, are the results of the survey of cities over 10,000 population relative to "tours of duty" and fire department "work cycles."

It is our hope that you will find the information useful, relevant and helpful to you and your staff in the development of regulations for public safety employees.

If you have any questions, or if we can be of further assistance, please call.

Sincerely,

/s/ Don
Donald A. Slater
Director
Office of Federal Relations

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Attached for your information are the results of the ICMA survey discussed by Chief Mitchell in his testimony on behalf of the National League of Cities, U.S. Conference of Mayors, International City Management Association, National Governors Conference and National Association of Counties before the Department of Labor on the development of regulations for implementation of the Fair Labor Standards Act Amendments of 1974 relating to public safety personnel.

All cities in the United States over 10,000 population were surveyed to determine fire "tours of duty" and fire department "work cycle" practices.

A key finding in the survey is that 80% of American municipal fire departments use a "tour of duty" which is 24 hours in length. Only 18% use a "split-shift" such as 10/14 (10 hour day shift; 14 hour night shift), 9/15 (9 hour day shift; 15 hour night shift), or the 11/13 (11 hour day shift; 13 hour night shift). Two percent of municipal fire departments use eight hour work shifts or other shift arrangements.

The prevailing practice among fire departments in the United States (except in a few states such as New Jersey and Pennsylvania) is to use the 24 hour duty period for firefighters assigned to fire suppression.

The Department of Labor decision as to whether to exempt or not exempt time spent in eating and sleeping thus has great importance in over a thousand American cities. The decision will affect fire department operations, costs of fire service and levels of fire service in a great many cities. The Department of Labor May 14 interim ruling, which requires that for firefighters with tours of duty of 24 hours or less no time may be deducted for meals or sleeping, reverses the historic practice of exempting meal and sleeping time for just this one group

of employees. Eating and sleeping time has been deducted for industrial firefighters assigned to a 24 hour tour of duty, as well as other employees in both the private and public sector assigned to 24 hour tours of duty. Equity requires that the ruling promulgated in the interim regulation be reversed and that the traditional and longstanding Wage and Hour ruling on 24 hour tours of duty be continued across the board to all employees who work such shifts.

Another key finding of the survey is that a majority of municipal fire departments have "work cycles" which are less than 7 days in length or greater than 28 days in length. Forty-one percent of municipal fire departments have "work cycles" which are two, three, four, five or six days in length. Nine and one-half percent of municipal fire departments report cycles ranging from 29 days to a year in length. These findings contradict testimony in the June 3 hearing that very few cities have "work cycles" in excess of 28 days. A further finding is that over one-third of fire department use a 24 hour on/48 hour off duty cycle. This averages 56 hours per week; the cycle is three days in length. Detailed information concerning the great variety of lengths of duty cycles is reported in the attached survey.

To accomodate to the new requirements imposed by Section 7 (k) of the Act, municipalities must have the discretion to determine the length of the "work period" at any point between 7 days and 28 days. Notwithstanding statements presented at the hearings, we submit that nowhere in the legislation or legislative intent can be found any support for the contention that the "work cycle" be the shortest number of days within the 7 to 28 day period within which the fire duty schedule is established without repeating itself.

While the question was not asked in the survey, many cities reported the use of "paybacks" and "Kelly days." The use of "paybacks" and "Kelly days" has the effect of lengthening the work cycle – often to as much as a year. A brief definition of these terms is: A *"payback"* is a tour of duty which the firefighter owes the city. It is a scheduled tour of duty within the calendar year but is paid back on occasions outside the regular work cycle. E.g. assume a fire department which as a 60 hour average fire duty week; the work cycle is 9 days in length. A fireman is scheduled to be on duty three 24-hour periods in the cycle as follows: (XOXOXOOO). On this work cycle a fireman would have a 56-hour average duty week. However, he is required during the year to "pay back" eight 24-hour duty periods. Each fire duty period paid back has the effect of one-half average hour per week. Therefore, the 8 fire duty periods served raises the average of the fire duty week over the course of a year to 60 hours. The use of "paybacks" is very common among many fire departments because of the several advantages to both firefighters and fire management in this kind of scheduling arrangement. The fire department can thus establish a three platoon system, and at the same time have the use of payback time for filling in for scheduled vacations or unscheduled absences such as sick leave relief.

The "Kelly Day" is the reverse of the payback in fire department scheduling of tours of duty. In the 1930's, Chicago firemen were on duty for 24 hours, then off duty 24 hours (equivalent to an average 84 hour week). Legend says that Mayor Kelly, then Mayor of Chicago, reduced Chicago fire hours by providing that every eighth scheduled 24-hour duty period would be taken off.

Thereupon, the Chicago fire duty cycle was changed from 2 days in length (XO) to a schedule of 16 days in length (XOXOXOXOXOXOXO*O). The formerly scheduled 24-hour period not worked was thus nicknamed the "Kelly Day" in recognition and appreciation of Mayor Kelly's action.

During the past thirty-plus years, the term "Kelly Day" has spread to many other cities and has more recently acquired a meaning somewhat parallel to that of "payback", except that the fireman will not serve one or more schedule shifts during the year, rather than to have to pay them back. For example, again assume that the fire department has a 9-day cycle, with 3 scheduled 24-hour periods on duty every 9 days (XOXOXOOOO). Now assume that each firefighter has 8 "Kelly Days" throughout the year. This means that instead of being scheduled to be on duty 121 times per year, a firefighter would actually be scheduled to be on duty only 113 (121-8) times per year. Thus, instead of an average 56-hour average duty week, in this example the firefighter would have an average 52-hour week. The "work cycle", in this example, would be extended from 9 days to possibly as long as an entire year. The administrative advantages of the Kelly Day are similar to the payback. The fire department can retain a basic platoon arrangement and permit "Kelly Days" off either on a regular recurring cycle, or perhaps on an irregular basis at times when the fire department can better afford to have fewer firefighters on duty.

Many cities surveyed volunteered the information that their particular departments use a "payback" or a "Kelly Day", on either a regular basis or an irregular basis. Since

*Kelly Day

the specific question was not asked on the survey questionnaire, it is not possible to report exact information as to how fire departments use one or the other of these scheduling methods. It is probable that as many as 20% of the municipal fire departments may use some variation of "payback" or "Kelly Day" scheduling. Therefore, the more likely percentage of fire departments having work cycles of other than between 7 and 28 days, rather than 50.5% is in excess of 60%.

With the requirement of the law being that the work period must be between 7 and 28 days, many fire departments throughout the United States will need to re-structure the fire duty schedule thus eliminating the present, and long-prevailing, practice of using "paybacks" and "Kelly Days."

Since there was no discussion at the hearing of the problems of paybacks and Kelly Days, these definitions and examples are presented to alert the Department of Labor to yet another complexity in dealing with fire duty schedules.

After the fire duty schedules had been returned and were being tabulated and analyzed, another pattern began to emerge from comments volunteered by respondents. In a number of states, laws have been enacted which regulate various aspects of fire hours, such as the length of the tour of duty, the length of the work cycle, or to specify the maximum average number of hours per week. Therefore, a special survey was prepared by the National League of Cities and sent to each State Municipal League, asking whether the individual state had legislation enacted which restricted or affected fire duty hours. Of 36 states which have replied to date, 18 have reported that there is current legislation in force within the state which restricts fire hours or scheduling. Many Leagues

attached copies of state statutes. As many of these statutes contain provisions which are contrary to the provisions of the Amendments to the Fair Labor Standards Act, copies of these statutes are included as attachments to this letter.

The regulation to be issued by the Department of Labor must specifically nullify any existing state statute which mandates less than a 7 day "work cycle" or more than a 28 day "work cycle". Cities must not be caught on the horns of a dilemma of complying with a state statute which will in turn cause unnecessary mandatory overtime

We especially would like to call to your attention the Texas statute, which requires cities to average fire duty hours over the course of an entire year. The Maine statute requires the work cycle to be not longer than 12 weeks. North and South Dakota each restrict the fire duty cycle to 2 weeks. For certain cities, New Jersey requires a 6-week fire duty cycle. Kentucky limits cities to 24-hours on-duty, 48-hours off-duty: a three day cycle. Michigan requires municipal fire departments to use a 24-hour fire duty period, with at least 24-hours off duty following an on duty period. On the other hand, New Jersey and Pennsylvania require a 10/14 system (10 hour day shift 8 a.m. to 6 p.m.; 14 hour night shift 6 p.m. to 8 a.m.). Montana has a law which appears to limit the work-related hours of a 24-hour fire duty period to a maximum of 8 hours, except for fire or emergency responses. A telephone call to Montana to identify more specifically the meaning of this statute produced the information that there are four cities of the first class and that each such city uses a 24-hour duty period. Therefore, this law seems to emphasize the difference between the traditional fire duty period in which up to a

third of the 24 hours are spent in active work-related activities, and at least two thirds of the 24-hour period is spent in sleeping, eating and other standby activities, but during which the firefighter is always subject to call to respond to alarms.

In addition to the supplemental attachment of the survey of state statutes, the final attachment is a computer printout of information for almost all cities participating in the survey. For technical reasons, as information was introduced into the computer on two occasions, we are informed that the computer run will not print individual data for 85 cities. Therefore, the array of data is not totally complete.

ICMA Survey on Firefighter Schedules

The recently passed Fair Labor Standards Act will have major implications for local government in the areas of police and fire. The Department of Labor is in the process of developing regulations which will determine how this law will be administered. They will be holding hearings on these regulations shortly. It is imperative that they receive local input to guide them.

By filling our the questionnaire below you will be giving us necessary information to make positive recommendations. Time is limited. Hearings begin on *June 3.* Please fill out the questionnaire and return it in the enclosed business reply envelope *immediately*.

* * *

1. Does your municipality have a full-time paid uniformed fire department (excluding departments with only a paid fire chief and the remainder volunteer)?

YES ( ) NO ( )

If "NO", please indicate which of the following is applicable to your municipality. (Check one)

_____ a. Volunteer fire department
_____ b. Contract for fire service
_____ c. Fire service provided by a special district
_____ d. Metropolitan government provides service
_____ e. Public Safety Department
_____ f. County provides service

2. DUTY SHIFT: Please indicate the length of the duty shift for personnel engaged in *actual* firefighting or suppression. (Check one)

_____ a. 24-hour continuous shift (includes sleeping and eating time)
_____ b. 10/14 shift (10 hour daytime, 14 hour nighttime shifts, e.g. a typical 10 hour shift would be 8 am to 6 pm and 14 hour shift; 6 pm to 8 am)
_____ c. 9/15 shift (9 hour daytime, 15 hour nighttime shifts)
_____ d. 8 hour work day (firefighters are on the job during the shift, not just on call)
_____ e. Other (Please explain)_____

_____

3. DUTY CYCLE: Work schedules are computed on the basis of a duty cycle of a certain number of days on and off. The cycle is not necessarily a week. For instance, it might be one day on duty, two days off duty and then repeating; this would be a three day work cycle. Cycles may range from 2 days to 28 days or longer.

Please indicate the length of your firefighters' duty cycle _____
(# of days)

Please indicate the number of days on duty during cycle _____
(# of days on duty)

4. HOURS ON DUTY PER WEEK: When averaged over the year, how many hours per week (7 days) are your firefighters on duty? _____ hours.

Name_____
Position _____
City _____
State _____

TABLE 1

CITIES OVER 10,000 POPULATION IN THE UNITED STATES
RESPONDING TO SURVEY OF MUNICIPAL FIREFIGHTERS

Population Group	No. of cities surveyed (A)	No.	% of (A)
Total, all cities....	2,290	1,637	72
Over 500,000	26	21	81
250,000 - 499,999 ...	30	23	77
100,000 - 249,999 ...	98	78	80
50,000 - 99,999 ...	256	193	75
25,000 - 49,999 ...	520	395	76
10,000 - 24,999 ...	1,360	927	68

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Table 2

CITIES OVER 10,000 IN THE UNITED STATES
HAVING FULL TIME PAID UNIFORMED FIREFIGHTERS

Population Group	No. of cities reporting (A)	Cities having full-time paid uniformed fire department: TOTAL No. (B)	TOTAL % of (A)	FF 5 & over No. (B)	FF 5 & over % of (B)	FF 4 & under No. (B)	FF 4 & under % of (B)	Size unknown No. (B)	Size unknown % of (B)	Cities not having full-time paid uniformed fire department: Total No. (C)	Total % of (A)	FF 5 & over No. (C)	FF 5 & over % of (C)	FF 4 & under No. (C)	FF 4 & under % of (C)	Size unknown No. (C)	Size unknown % of (C)
Total, all cities ...	1,637	1,270	78	966	76	8	1	296	23	367	22	24	7	28	8	315	86
Over 500,000	21	21	100	16	76	0	.	5	24	0	...	..	.	..	.	...	..
250,000 - 499,999 ...	23	23	100	22	96	0	.	1	4	0	..	..	.	..	.	...	..
100,000 - 249,999 ...	78	78	100	68	87	0	.	10	13	0	..	..	.	..	.	...	..
50,000 - 99,999 ...	193	175	91	136	78	0	.	39	22	18	9	2	11	0	.	16	89
25,000 - 49,999 ...	395	336	85	267	79	2	0	67	20	59	15	3	5	3	5	53	90
),000 - 24,999 ...	927	637	69	457	72	6	1	174	27	290	31	19	7	25	9	246	85

Table 3

TOURS OF DUTY FOR FIREFIGHTERS IN CITIES OVER 10,000

ulation Group	# of Cities Reporting (A)	24 Hour Continuous Shift No.	% of (A)	10/14 Shift No.	% of (A)	9/15 Shift No.	% of (A)	11/13 Shift No.	% of (A)	8 Hour Workday No.	% of (A)	Other No.	% of (A)
Total, all cities	1,296	1,012	80	207	16	6	1	6	1	24	2	14	1
Over 500,000	21	13	62	7	33	1	5	0	0	0	0	0	0
250,000 - 499,999	22	18	82	3	14	0	0	1	4	0	0	0	0
100,000 - 249,000	78	62	79	16	21	0	0	0	0	0	0	0	0
50,000 - 99,999	175	127	73	45	26	0	0	0	0	2	1	1	.↓.
25,000 - 49,999	356	270	80	53	16	1	.↓.	3	1	5	2	4	1
[illegible] - 24,999	637	522	82	83	13	4	1	2	.↓.	17	3	9	1

.↓. Less than .5%

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July 2, 1974

Table 3(a)

MUNICIPALITIES HAVING 24-HOUR CONTINUOUS DUTY SHIFT FOR FIREFIGHTERS

Population Group	No. of cities reporting (A)	FF 5&over No.	% of ( )	FF 4&under No.	%of ( )	Size unknown No.	%of ( )
Total, all cities...	1,012	804	79	7	1	201	20
Over 500,000.....	13	10	77	0	..	3	23
250,000 - 499,999...	18	18	100	0	..	0	..
100,000 - 249,999...	62	57	92	0	..	5	8
50,000 - 99,999...	127	107	84	0	..	20	16
25,000 - 49,999...	270	225	83	2	1	43	16
10 00 - 24,999...	522	387	74	5	1	130	25

↓ LESS THAN 5%

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Table 3(b)

MUNICIPALITIES HAVING A 10/14 DUTY SHIFT FOR FIREFIGHTERS

Population Group	No. of cities reporting (A)	FF 5& over No.	% of (A)	FF 4 & under No.	% of (A)	Size unknown No.	% of (A)
Total, all cities...	207	136	66	0	..	71	34
Over 500,000.....	7	6	86	0	..	1	14
250,000 - 249,999...	3	2	67	0	..	1	33
100,000 - 249,999...	16	12	75	0	..	4	25
50,000 - 99,999 ...	45	26	58	0	..	19	42
25,000 - 49,999....	53	37	70	0	..	16	30
1)00 - 24,999...	83	53	64	0	..	30	36

Table 3(c)

MUNICIPALITIES HAVING A 9/15 DUTY SHIFT FOR FIREFIGHTERS

opulation Group	No. of cities reporting (A)	FF 5 and over No.	% of (A)	FF 4 and under No.	% of (A)	Size unknown No.	% of (A)
otal, all cities...	6	4	67	0	...	2	33
ver 500,000	1	1	100	0	...	0	...
50,000 - 499,999 ..	0	...	...	...	...	...	...
00,000 - 249,999 ..	0	...	...	...	...	...	...
50,000 - 99,999 ..	0	...	...	...	...	...	...
25,000 - 49,999 ..	1	1	100	0	...	0	...
10,000 - 24,999 ...	4	2	50	0	...	2	50

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Table 3(d)

MUNICIPALITIES HAVING AN 11/13 DUTY SHIFT FOR FIREFIGHTERS

Population Group	No. of cities reporting (A)	FF 5 and over No.	FF 5 and over % of (A)	FF 4 and under No.	FF 4 and under % of (A)	Size unknown No.	Size unknown % of (A)
Total, all cities....	6	4	67	0	..	2	33
Over 500,000.....	0	..	..	..	..	..	..
250,000 - 499,999....	1	1	100	0	..	0	..
100,000 - 249,999....	0	..	..	..	..	..	..
50,000 - 99,999.....	0	..	..	..	..	..	..
25,000 - 49,999.....	3	3	100	0	..	0	..
,000 -24,999.....	2	3	..	0	..	0	100

Table 3(e)

MUNICIPALITIES HAVING AN 8-HOUR WORK DAY FOR FIREFIGHTERS

Population Group	No. of cities reporting (A)	FF 5 and over No.	FF 5 and over % of (A)	FF 4 and under No.	FF 4 and under % of (A)	Size unknown No.	Size unknown % of (A)
Total, all cities...	24	11	46	0	..	13	54
Over 500,000.....	0	..	..	..	..	..	..
250,000 - 499,999...	0	..	..	..	..	..	..
100,000 - 249,999...	0	..	..	..	..	..	..
50,000 - 99,999....	2	2	100	0	..	0	..
25,000 - 49,999....	5	3	60	0	..	2	40
10,000 - 24,999....	17	6	35	0	..	11	65

Table 3(f)

MUNICIPALITIES HAVING "OTHER" DUTY SHIFTS FOR FIREFIGHTERS

Population Group	No. of cities reporting (A)	FF 5 and over No.	FF 5 and over % of (A)	FF 4 and under No.	FF 4 and under % of (A)	Size unknown No.	Size unknown % of (A)
Total, all cities...	14	8	57	0	..	6	43
Over 500,000.....	0	..	..	..	..	..	..
250,000 - 499,999...	0	..	..	..	..	..	..
100,000 -249,999....	0	..	..	..	..	..	..
50,000 - 99,999....	1	1	100	0	..	0	..
25,000 - 49,999....	4	2	50	0	..	2	50
10,000 - 24,999....	9	5	55	0	..	4	45

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Table 4

LENGTH OF FIREFIGHTERS DUTY CYCLE (IN DAYS)

		2								3							
Population Group	No. of cities reporting (A)	Total No. (B)	Total % of (A)	FF 5&over No. (B)	FF 5&over % of (B)	FF 4 & Under No. (B)	FF 4 & Under % of (B)	Size unknown No. (B)	Size unknown % of (B)	Total No. (C)	Total % of (A)	FF 5&over No. (C)	FF 5&over % of (C)	FF 4&under No. (C)	FF 4&under % of (C)	Size unknown No. (C)	Size unknown % of (C)
Total, all cities.....	1,209	12	1	9	75	0	..	3	25	438	36	338	77	5	1	95	22
Over 500,000.....	21	0	..	..	..	..	..	..	..	6	29	5	83	0	..	1	17
250,000 -499,999.....	22	0	..	..	..	..	..	..	..	11	50	11	100	0	..	0	..
100,000 - 249,999.....	78	0	..	..	..	..	..	..	..	22	28	20	91	0	..	2	9
50,000 - 99,999	165	0	..	..	..	..	..	..	..	48	29	40	83	0	..	8	17
25,000 - 49,999.....	321	1	..	1	100	0	..	0	..	116	36	100	86	3	3	13	11
10,000 - 24,999.....	602	11	2	8	73	0	..	3	27	235	39	162	69	2	1	71	30

.. less than .5%

Table 4 (cont'd.)

LENGTH OF FIREFIGHTERS DUTY CYCLE (in days) cont'd.

Population Group	No. of cities reporting (A)	4 Total No. (D)	4 Total % of (A)	4 FF 5& over No. (D)	4 FF 5& over % of (D)	4 FF 4 & Under No. (D)	4 FF 4 & Under % of (D)	4 Size unknown No. (D)	4 Size unknown % of (D)	5 Total No. (E)	5 Total % of (A)	5 FF 5& over No. (E)	5 FF 5& over % of (E)	5 FF 4& under No. (E)	5 FF 4& under % of (E)	5 Size unknown No. (E)	5 Size unknown % of (E)
Total, all cities....	1,209	17	1	11	65	0	..	6	35	1	↓	1	100	0	..	0	..
Over 500,000.....	21	0	..	..	..	..	..	..	..	0	..	..	..	..	..	..	..
500,000 - 499,999.....	22	0	..	..	..	..	..	..	..	0	..	..	..	..	..	..	..
100,000 - 249,999.....	78	0	..	..	..	..	..	..	..	0	..	..	..	..	..	..	..
50,000 - 99,999.....	165	4	2	2	50	0	..	2	50	0	..	..	..	..	..	..	..
25,000 - 49,999.....	321	4	1	2	50	0	..	2	50	0	..	..	..	..	..	..	..
10,000 - 24,999.....	602	9	2	7	78	0	..	2	22	1	↓	1	..	0	..	0	..

↓ less than .5%

Table 4 (cont'd.)

LENGTH OF FIREFIGHTERS DUTY CYCLE (in days) cont'd.

Population Group	No. of cities reporting (A)	6 Total No. (F)	6 Total % of (A)	6 FF 5& over No. (F)	6 FF 5& over % of (F)	6 FF 4 & Under No. (F)	6 FF 4 & Under % of (F)	6 Size unknown No. (F)	6 Size unknown % of (F)	7 Total No. (G)	7 Total % of (A)	7 FF 5& over No. (G)	7 FF 5& over % of (G)	7 FF 4& under No. (G)	7 FF 4& under % of (G)	7 Size unknown No. (G)	7 Size unknown % of (G)
Total, all cities....	1,209	28	2	23	82	0	..	5	18	44	4	30	68	0	..	14	32
Over 500,000.....	21	1	5	1	100	0	..	0	..	0	..	..	..	..	..	..	..
500,000 - 499,999.....	22	1	5	1	100	0	..	0	..	0	..	..	..	..	..	..	..
100,000 - 249,999.....	78	2	3	2	100	0	..	0	..	0	..	..	..	..	..	..	..
50,000 - 99,999.....	165	3	2	3	100	0	..	0	..	4	2	4	100	0	..	0	..
25,000 - 49,999.....	321	8	3	7	88	0	..	1	13	9	3	6	67	0	..	3	23
10,000 - 24,999.....	602	13	2	9	69	0	..	4	31	31	5	20	65	0	..	11	35

Table 4 cont'd.

LENGTH OF FIREFIGHTERS DUTY CYCLE (in days) cont'd.

Population Group	No. of cities reporting (A)	8 Total No. (H)	8 Total % of (A)	8 FF 5&over No. (H)	8 FF 5&over % of (H)	8 FF 4 &Under No. (H)	8 FF 4 &Under % of (H)	8 Size unknown No. (H)	8 Size unknown % of (H)	9 Total No. (I)	9 Total % of (A)	9 FF 5&over No. (I)	9 FF 5&over % of (I)	9 FF 4&under No. (I)	9 FF 4&under % of (I)	9 Size unknown No. (I)	9 Size unknown % of (I)
Total, all cities....	1,209	118	10	89	75	2	2	27	23	182	15	148	81	1	1	33	18
Over 500,000.....	21	2	10	1	50	0	..	1	50	3	14	2	67	0	..	1	33
,000 - 499,999....	22	1	5	1	100	0	..	0	..	2	9	2	100	0	..	0	..
100,000 - 249,999....	78	6	8	6	100	0	..	0	..	18	23	16	89	0	..	2	11
50,000 - 99,999.....	165	14	8	6	43	0	..	8	57	38	23	34	89	0	..	4	11
25,000 - 49,999.....	321	35	11	29	83	0	..	6	17	58	18	51	88	0	..	7	12
10,000 - 24,999.....	602	60	10	46	77	2	3	12	20	63	11	43	68	1	2	19	30

Table 4 cont'd.

LENGTH OF FIREFIGHTERS DUTY CYCLE (in days) cont'd.

Population Group	No. of cities reporting (A)	10 Total No. (J)	10 Total % of (A)	10 FF 5&over No. (J)	10 FF 5&over % of (J)	10 FF 4 &Under No. (J)	10 FF 4 &Under % of (J)	10 Size unknown No. (J)	10 Size unknown % of (J)	11 Total No. (K)	11 Total % of (A)	11 FF 5&over No. (k)	11 FF 5&over % of (k)	11 FF 4&under No. (K)	11 FF 4&under % of (K)	11 Size unknown No. (K)	11 Size unknown % of (K)
Total, all cities....	1,209	21	2	20	95	0	..	1	5	4	↓ ..	3	75	0	..	1	25
Over 500,000.....	21	0	..	..	..	..	..	..	..	1	5	1	100	0	..	0	..
,000 - 499,999.....	22	0	..	..	..	..	..	..	..	0	..	..	..	..	..	..	..
100,000 - 249,999.....	78	0	..	..	..	..	..	..	..	0	..	..	..	..	..	..	..
50,000 - 99,999.....	165	3	2	3	100	0	..	0	..	0	..	..	..	..	..	..	..
25,000 - 49,999.....	321	4	1	4	100	0	..	0	..	1	↓ ..	0	..	0	..	1	100
10,000 - 24,999.....	602	14	2	13	93	0	..	1	7	2	↓ ..	2	100	0	..	0	..

↓ .5% (less than .5%)

Table 4 cont'd.

LENGTH OF FIREFIGHTERS DUTY CYCLE (in days) cont'd.

Population Group	No. of cities reporting (A)	12 Total No. (L)	12 Total % of (A)	12 FF 5&over No. (L)	12 FF 5&over % of (L)	12 FF 4 &Under No. (L)	12 FF 4 &Under % of (L)	12 Size unknown No. (L)	12 Size unknown % of (L)	14 Total No. (M)	14 Total % of (A)	14 FF 5&over No. (M)	14 FF 5&over % of (M)	14 FF 4&under No. (M)	14 FF 4&under % of (M)	14 Size unknown No. (M)	14 Size unknown % of (M)
Total, all cities....	1,209	56	5	40	71	0	..	16	29	27	2	22	81	0	..	5	19
Over 500,000.....	21	0	..	..	..	..	..	..	..	0	..	..	..	..	..	..	..
250,000 - 499,999.....	22	2	9	1	50	0	..	1	50	0	..	..	..	..	..	..	..
100,000 - 249,999.....	78	4	5	3	75	0	..	1	25	2	3	2	100	0	..	0	..
50,000 - 99,999.....	165	14	9	9	64	0	..	5	36	2	1	1	50	0	..	1	50
25,000 - 49,999.....	321	14	4	9	64	0	..	5	36	6	2	6	100	0	..	0	..
10,000 - 24,999.....	602	22	4	18	82	0	..	4	18	17	3	13	76	0	..	4	24

Table 4 cont'd.

LENGTH OF FIREFIGHTERS DUTY CYCLE (in days) cont'd.

Population Group	No. of cities reporting (A)	15 Total No. (N)	15 Total % of (A)	15 FF 5&over No. (N)	15 FF 5&over % of (N)	15 FF 4 &Under No. (N)	15 FF 4 &Under % of (N)	15 Size unknown No. (N)	15 Size unknown % of (N)	16 Total No. (O)	16 Total % of (A)	16 FF 5&over No. (O)	16 FF 5&over % of (O)	16 FF 4&under No. (O)	16 FF 4&under % of (O)	16 Size unknown No. (O)	16 Size unknown % of (O)
Total, all cities....	1,209	14	1	12	86	0	..	2	14	11	1	8	73	0	..	3	27
Over 500,000.....	21	0	..	..	..	..	..	..	..	0	..	..	..	..	..	..	..
250,000 - 499,999.....	22	1	5	1	100	0	..	0	..	0	..	..	..	..	..	..	..
100,000 - 249,999.....	78	2	3	2	100	0	..	0	..	0	..	..	..	..	..	..	..
50,000 - 99,999.....	165	2	1	2	100	0	..	0	..	0	..	..	..	..	..	..	..
25,000 - 49,999.....	321	5	2	5	100	0	..	0	..	1	↘	0	..	0	..	1	100
10,000 - 24,999.....	602	4	1	2	50	0	..	2	50	10	2	8	80	0	..	2	20

↘. less than 5%

Table 4 cont'd.

LENGTH OF FIREFIGHTERS DUTY CYCLE (in days) cont'd.

Population Group	No. of cities reporting (A)	17 Total No. (P)	17 Total % of (A)	17 FF 5& over No. (P)	17 FF 5& over % of	17 FF 4 & Under No. (P)	17 FF 4 & Under % of	17 Size unknown No. (P)	17 Size unknown % of	18 Total No. (Q)	18 Total % of (A)	18 FF 5& over No. (Q)	18 FF 5& over % of	18 FF 4& under No. (Q)	18 FF 4& under % of	18 Size unknown No. (Q)	18 Size unknown % of
Total, all cities....	1,209	1	↓	0	..	0	..	1	100	4	↓	4	100	0	..	0	..
Over 500,000.....	21	0	..	..	..	..	..	..	..	0	..	..	..	..	..	..	..
10,000 - 499,999.....	22	0	..	..	..	..	..	..	..	0	..	..	..	..	..	..	..
100,000 - 249,999.....	78	1	1	0	..	0	..	1	100	0	..	..	..	..	..	..	..
50,000 - 99,999.....	165	0	..	..	..	..	..	..	..	1	1	1	100	0	..	0	..
25,000 - 49,999.....	321	0	..	..	..	..	..	..	..	1	↓	1	100	0	..	0	..
10,000 - 24,999.....	602	0	..	..	..	..	..	..	..	2	↓	2	100	0	..	0	..

↓ less than .5%

Table 4 cont'd.

July 2, 1974

LENGTH OF FIREFIGHTERS DUTY CYCLE (in days) cont'd.

Population Group	No. of cities reporting (A)	20 Total No. (R)	20 Total % of (A)	20 FF 5& over No. (R)	20 FF 5& over % of	20 FF 4 & Under No. (R)	20 FF 4 & Under % of	20 Size unknown No. (R)	20 Size unknown % of	21 Total No. (S)	21 Total % of (A)	21 FF 5& over No. (S)	21 FF 5& over % of	21 FF 4& under No. (S)	21 FF 4& under % of	21 Size unknown No. (S)	21 Size unknown % of
Total, all cities....	1,209	2	↓	2	100	0	..	0	..	27	2	16	59	1	4	10	37
Over 500,000.....	21	0	..	..	..	..	..	..	..	1	5	0	..	0	..	1	100
10,000 - 499,999.....	22	0	..	..	..	..	..	..	..	1	5	1	100	0	..	0	..
100,000 - 249,999.....	78	0	..	..	..	..	..	..	..	3	4	1	33	0	..	2	67
50,000 - 99,999.....	165	0	..	..	..	..	..	..	..	4	2	4	100	0	..	0	..
25,000 - 49,999.....	321	0	..	..	..	..	..	..	..	8	2	5	62	0	..	3	38
10,000 - 24,999.....	602	2	↓	2	100	0	..	0	..	10	2	5	50	1	10	4	40

↓ less than .5%

Table 4 cont'd.

LENGTH OF FIREFIGHTERS DUTY CYCLE (in days) cont'd

Population Group	No. of cities reporting (A)	22 Total No. (T)	22 Total % of (A)	22 FF 5&over No. (T)	22 FF 5&over % of (T)	22 FF 4&Under No. (T)	22 FF 4&Under % of (T)	22 Size unknown No. (T)	22 Size unknown % of (T)	24 Total No. (U)	24 Total % of (A)	24 FF 5&over No. (U)	24 FF 5&over % of (U)	24 FF 4&under No. (U)	24 FF 4&under % of (U)	24 Size unknown No. (U)	24 Size unknown % of (U)
Total, all cities....	1,209	1	↓	1	100	0	..	0	..	13	1	13	100	0	..	0	..
Over 500,000.....	21	0	..	..	..	..	..	..	..	2	10	2	100	0	..	0	..
0,000 - 499,999....	22	0	..	..	..	..	..	..	..	1	1	1	100	0	..	0	..
100,000 - 249,999....	78	0	..	..	..	..	..	..	..	4	5	4	100	0	..	0	..
50,000 - 99,999.....	165	0	..	..	..	..	..	..	..	1	1	1	100	0	..	0	..
25,000 - 49,999.....	321	0	..	..	..	..	..	..	..	5	2	5	100	0	..	0	..
10,000 - 24,999.....	602	1	↓	1	100	0	..	0	..	0	..	..	..	..	..	..	..

↓ less than .5%

Table 4 cont'd.

LENGTH OF FIREFIGHTERS DUTY CYCLE (in days) cont'd

Population Group	No. of cities reporting (A)	25 Total No. (V)	25 Total % of (A)	25 FF 5&over No. (V)	25 FF 5&over % of (V)	25 FF 4&Under No. (V)	25 FF 4&Under % of (V)	25 Size unknown No. (V)	25 Size unknown % of (V)	26 Total No. (W)	26 Total % of (A)	26 FF 5&over No. (W)	26 FF 5&over % of (W)	26 FF 4&under No. (W)	26 FF 4&under % of (W)	26 Size unknown No. (W)	26 Size unknown % of (W)
Total, all cities....	1,209	1	↓	1	100	0	..	0	..	1	↓	1	100	0	..	0	..
Over 500,000.....	21	1	5	1	100	0	..	0	..	0	....	..	..	..	..	..	..
0,000 - 499,999.....	22	0	..	..	..	..	..	..	..	0	..	..	..	..	..	..	..
100,000 - 249,999.....	78	0	..	..	..	..	..	..	..	0	..	..	..	..	..	..	..
50,000 - 99,999.....	165	0	..	..	..	..	..	..	..	0	..	..	..	..	..	..	..
25,000 - 49,999.....	321	0	..	..	..	..	..	..	..	0	..	..	..	..	..	..	..
10,000 - 24,999.....	602	0	..	..	..	..	..	..	..	1	↓	1	100	0	..	0	..

↓ less than .5%

Table 4 cont'd.

LENGTH OF FIREFIGHTERS DUTY CYCLE (in days) cont'd

Population Group	No. of cities reporting (A)	27 Total No. (X)	27 Total % of (A)	27 FF 5&over No. (X)	27 FF 5&over % of (X)	27 FF 4 &Under No. (X)	27 FF 4 &Under % of (X)	27 Size unknown No. (X)	27 Size unknown % of (X)	28 Total No. (Y)	28 Total % of (A)	28 FF 5&over No. (Y)	28 FF 5&over % of (Y)	28 FF 4&under No. (Y)	28 FF 4&under % of (Y)	28 Size unknown No. (Y)	28 Size unknown % of (Y)
Total, all cities....	1,209	13	1	10	77	0	..	3	23	58	5	44	76	1	2	13	22
Over 500,000.....	21	0	..	..	..	..	..	..	..	0	..	..	..	..	..	..	..
0,000 - 499,999.....	22	0	..	..	..	..	..	..	..	0	..	..	..	..	..	..	..
100,000 - 249,999.....	78	1	1	1	100	0	..	0	..	2	3	2	100	0	..	0	..
50,000 - 99,999.....	165	5	3	4	80	0	..	1	20	6	4	6	100	0	..	0	..
25,000 - 49,999.....	321	3	1	1	33	0	..	2	67	14	4	13	93	0	..	1	7
10,000 - 24,999.....	602	4	1	4	100	0	..	0	..	36	6	23	64	1	3	12	33

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Table 4 cont'd.

LENGTH OF FIREFIGHTERS DUTY CYCLE (in days) cont'd.

Population Group	No. of cities reporting (A)	30 Total No. (Z)	30 Total % of (A)	30 FF 5&over No. (Z)	30 FF 5&over % of (Z)	30 FF 4 &Under No. (Z)	30 FF 4 &Under % of (Z)	30 Size unknown No. (Z)	30 Size unknown % of (Z)	32 Total No. (AA)	32 Total % of (A)	32 FF 5&over No. (AA)	32 FF 5&over % of (AA)	32 FF 4&under No. (AA)	32 FF 4&under % of (AA)	32 Size unknown No. (AA)	32 Size unknown % of (AA)
Total, all cities....	1,209	27	2	25	93	0	..	2	7	9	1	9	100	0	..	0	..
Over 500,000.....	21	1	5	1	100	0	..	0	..	0	..	..	..	..	..	..	..
50,000 - 499,999....	22	0	..	..	..	..	..	..	..	0	..	..	..	..	..	..	..
100,000 - 249,999.....	78	3	4	3	100	0	..	0	..	0	..	..	..	..	..	..	..
50,000 - 99,999.....	165	0	..	..	..	..	..	..		1	1	1	100	0	..	0	..
25,000 - 49,999.....	321	6	2	6	100	0	..	0	..	3	1	3	100	0	..	0	..
10,000 - 24,999.....	602	17	3	15	88	0	..	2	12	5	1	5	100	0	..	0	..

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Table 4 cont'd.

LENGTH OF FIREFIGHTERS DUTY CYCLE (in days) cont'd.

Population Group	No. of cities reporting (A)	33 Total No. (BB)	33 Total % of (A)	33 FF 5&over No. (BB)	33 FF 5&over % of (BB)	33 FF 4 &Under No. (BB)	33 FF 4 &Under % of (BB)	33 Size unknown No. (BB)	33 Size unknown % of (BB)	35 Total No. (CC)	35 Total % of (A)	35 FF 5&over No. (CC)	35 FF 5&over % of (CC)	35 FF 4&under No. (CC)	35 FF 4&under % of (CC)	35 Size unknown No. (CC)	35 Size unknown % of (CC)
Total, all cities....	1,209	1	↓	1	100	0	..	0	..	1	↓	1	100	0	..	0	..
Over 500,000.....	21	0	..	..	..	..	..	..	..	0	..	..	..	..	..	..	..
0,000 - 499,999....	22	0	..	..	..	..	..	..	..	0	..	..	..	..	..	..	..
100,000 - 249,999....	78	0	..	..	..	..	..	..	..	0	..	..	..	..	..	..	..
50,000 - 99,999.....	165	0	..	..	..	..	..	..	..	0	..	..	..	..	..	..	..
25,000 - 49,999.....	321	1	↓	1	100	0	..	0	..	0	..	..	..	..	..	..	..
10,000 - 24,999.....	602	0	..	..	..	..	..	..	..	1	↓	1	100	0	..	0	..

↓ less than .5%

Table 4 cont'd.

LENGTH OF FIREFIGHTERS DUTY CYCLE (in days) cont'd.

Population Group	No. of cities reporting (A)	36 Total No. (DD)	36 Total % of (A)	36 FF 5&over No. (DD)	36 FF 5&over % of (DD)	36 FF 4 &Under No. (DD)	36 FF 4 &Under % of (DD)	36 Size unknown No. (DD)	36 Size unknown % of (DD)	40 Total No. (EE)	40 Total % of (A)	40 FF 5&over No. (EE)	40 FF 5&over % of (EE)	40 FF 4&under No. (EE)	40 FF 4&under % of (EE)	40 Size unknown No. (EE)	40 Size unknown % of (EE)
Total, all cities....	1,209	3	↓	2	67	0	..	1	33	2	↓	0	..	0	..	2	100
Over 500,000.....	21	0	..	..	..	..	..	..	..	0	..	..	..	..	..	..	..
0,000 - 499,999....	22	0	..	..	..	..	..	..	..	0	..	..	..	..	..	..	..
100,000 - 249,999.....	78	0	..	..	..	..	..	..	..	0	..	..	..	..	..	..	..
50,000 - 99,999.....	165	0	..	..	..	..	..	..	..	0	..	..	..	..	..	..	..
25,000 - 49,999.....	321	1	↓	1	100	0	..	0	..	0	..	..	..	..	..	..	..
10,000 - 24,999.....	602	2	↓	1	50	0	..	1	50	2	↓	0	..	0	..	2	100

↓ less than .5%

Table 4 cont'd.

LENGTH OF FIREFIGHTERS DUTY CYCLE (in days) cont'd.

Population Group	No. of cities reporting (A)	42 Total No. (FF)	42 Total % of (A)	42 FF 5& over No. (FF)	42 FF 5& over % of (FF)	42 FF 4 &Under No. (FF)	42 FF 4 &Under % of (FF)	42 Size unknown No. (FF)	42 Size unknown % of (FF)	45 Total No. (GG)	45 Total % of (A)	45 FF 5& over No. (GG)	45 FF 5& over % of (GG)	45 FF 4& under No. (GG)	45 FF 4& under % of (GG)	45 Size unknown No. (GG)	45 Size unknown % of (GG)
Total, all cities...	1,209	10	1	8	80	0	---	2	20	↓	---	1	50	0	---	1	50
Over 500,000.....	21	0	---	---	---	---	---	---	---	(	---	---	---	---	---	---	---
50,000 - 499,999...	22	0	---	---	---	---	---	---	---	0	---	---	---	---	---	---	---
100,000 - 249,999....	78	2	3	2	100	0	---	0	---	1	1	1	100	0	---	0	---
50,000 - 99,999.....	165	1	1	1	100	0	---	0	---	0	---	---	---	---	---	---	---
25,000 - 49,999.....	321	4	1	3	75	0	---	1	25	0	---	---	---	---	---	---	---
10,000 - 24,999.....	602	3	↓	2	67	0	---	1	33	1	---	0	---	0	---	1	100

↓ Less than .5%

Table 4 cont'd.

LENGTH OF FIREFIGHTERS DUTY CYCLE (in days) cont'd.

Population Group	No. of cities reporting (A)	48 Total No. (HH)	48 Total % of (A)	48 FF 5& over No. (HH)	48 FF 5& over % of (HH)	48 FF 4 &Under No. (HH)	48 FF 4 &Under % of (HH)	48 Size unknown No. (HH)	48 Size unknown % of (HH)	49 Total No. (II)	49 Total % of (A)	49 FF 5& over No. (II)	49 FF 5& over % of (II)	49 FF 4& under No. (A)	49 FF 4& under % of (A)	49 Size unknown No. (II)	49 Size unknown % of (II)
Total, all cities...	1,209	1	↓	0	---	0	---	1	100	4	↓	3	75	0	---	1	25
Over 500,000.....	21	0	---	---	---	---	---	---	---	1	5	1	100	0	---	0	---
50,000 - 499,999....	22	0	---	---	---	---	---	---	---	0	---	---	---	---	---	---	---
100,000 - 249,999....	78	0	---	---	---	---	---	---	---	0	---	---	---	---	---	---	---
50,000 - 99,999.....	165	0	---	---	---	---	---	---	---	0	---	---	---	---	---	---	---
25,000 - 49,999.....	321	1	↓	0	---	0	---	1	100	1	---	1	100	0	---	0	---
10,000 - 24,999.....	602	0	---	---	---	---	---	---	---	2	---	1	50	0	---	1	50

↓ Less than .5%

Table 4 cont'd.

LENGTH OF FIREFIGHTERS DUTY CYCLE (in days) cont'd

Population Group	No. of cities reporting (A)	56 Total No. (JJ)	56 Total % of (A)	56 FF 5&over No. (II)	56 FF 5&over % of (II)	56 FF 4 &Under No. (II)	56 FF 4 &Under % of (II)	56 Size unknown No. (II)	56 Size unknown % of (II)	60 Total No. (KK)	60 Total % of (A)	60 FF 5&over No. (KK)	60 FF 5&over % of (KK)	60 FF 4&under No. (KK)	60 FF 4&under % of (KK)	60 Size unknown No. (KK)	60 Size unknown % of (KK)
Total, all cities....	1,209	27	2	16	59	0	...	11	41	3	↓	2	67	0	...	1	33
Over 500,000.....	21	1	5	1	100	0	...	0	...	0	...	...	...	...	...	...	...
,000 - 499,999....	22	2	9	2	100	0	...	0	...	0	...	...	...	...	...	...	...
100,000 - 249,999....	78	2	3	0	...	0	...	2	100	0	...	...	...	...	...	...	...
50,000 - 99,999.....	165	6	4	3	50	0	...	3	50	0	...	...	...	...	...	...	...
25,000 - 49,999.....	321	7	2	5	71	0	...	2	29	1	...	1	100	0	...	0	...
10,000 - 24,999.....	602	9	1	5	56	0	...	4	44	2	...	1	50	0	...	1	50

↓ less than .5%

Table 4 cont'd.

LENGTH OF FIREFIGHTERS DUTY CYCLE (in days) cont'd

Population Group	No. of cities reporting (A)	63 Total No. (LL)	63 Total % of (A)	63 FF 5&over No. (LL)	63 FF 5&over % of (LL)	63 FF 4 &Under No. (LL)	63 FF 4 &Under % of (LL)	63 Size unknown No. (LL)	63 Size unknown % of (LL)	64 Total No. (MM)	64 Total % of (A)	64 FF 5&over No. (MM)	64 FF 5&over % of (MM)	64 FF 4&under No. (MM)	64 FF 4&under % of (MM)	64 Size unknown No. (MM)	64 Size unknown % of (MM)
Total, all cities...	1,209	7	1	5	71	0	...	2	29	1	↓	1	100	0	...	0	...
Over 500,000.....	21	0	...	...	...	...	...	...	...	0	...	...	...	...	...	...	...
),000 - 499,999...	22	0	...	...	...	...	...	...	...	0	...	...	...	...	...	...	...
100,000 - 249,999...	78	1	1	1	100	0	...	0	...	0	...	...	...	...	...	...	...
50,000 - 99,999....	165	4	2	3	75	0	...	1	25	1	↓	1	100	0	...	0	...
25,000 - 49,999....	321	1	↓	1	100	0	...	0	...	0	...	...	...	...	...	...	...
10,000 - 24,999....	602	1	↓	0	...	0	...	1	100	0	...	...	...	...	...	...	...

↓ less than .5%

Table 4 cont'd.

LENGTH OF FIREFIGHTERS DUTY CYCLE (in days) cont'd

Population Group	No. of cities reporting (A)	72 Total No. (NN)	72 Total % of (A)	72 FF 5&over No. (NN)	72 FF 5&over % of (NN)	72 FF 4&Under No. (NN)	72 FF 4&Under % of (NN)	72 Size unknown No. (NN)	72 Size unknown % of (NN)	84 Total No. (OO)	84 Total % of (A)	84 FF 5&over No. (OO)	84 FF 5&over % of (OO)	84 FF 4&under No. (OO)	84 FF 4&under % of (OO)	84 Size unknown No. (OO)	84 Size unknown % of (OO)
Total, all cities..	1,209	1	↓	1	100	0	...	0	...	8	1	8	100	0	...	0	...
Over 500,000.....	21	0	...	...	...	...	...	...	...	0	...	...	...	...	...	...	...
,000 - 499,999..	22	0	...	...	...	...	...	...	...	0	...	...	...	...	...	...	...
100,000 - 249,999...	78	0	...	...	...	...	...	...	...	2	3	2	100	0	...	0	...
50,000 - 99,999....	165	0	...	...	...	...	...	...	...	2	1	2	100	0	...	0	...
25,000 - 49,999....	321	0	...	...	...	...	...	...	...	1	↓	1	100	0	...	0	...
10,000 - 24,999.....	602	1	↓	1	100	0	...	0	...	3	↓	3	100	0	...	0	...

↓ .. less than .5%

Table 4 cont'd.

LENGTH OF FIREFIGHTERS DUTY CYCLE (in days) cont'd

Population Group	No. of cities reporting (A)	98 Total No. (PP)	98 Total % of (A)	98 FF 5&over No. (PP)	98 FF 5&over % of (PP)	98 FF 4&Under No. (PP)	98 FF 4&Under % of (PP)	98 Size unknown No. (PP)	98 Size unknown % of (PP)	364 Total No. (QQ)	364 Total % of (A)	364 FF 5&over No. (QQ)	364 FF 5&over % of (QQ)	364 FF 4&under No. (QQ)	364 FF 4&under % of (QQ)	364 Size unknown No. (QQ)	364 Size unknown % of (QQ)
Total, all cities....	1,209	3	↓•	3	100	0	0	0	0	5	↓•	4	80	0	...	1	20
Over 500,000.....	21	0	...	...	...	...	...	...	...	1	5	1	100	0	...	0	...
,000 - 499,999....	22	0	...	...	...	...	...	...	...	0	...	...	...	...	...	...	...
00,000 - 249,999....	78	0	...	...	...	...	...	...	...	0	...	...	...	...	...	...	...
50,000 - 99,999.....	165	1	1	1	100	0	...	0	...	0	...	...	...	...	...	...	...
25,000 - 49,999.....	321	1	↓	1	100	0	...	0	...	0	...	...	...	...	...	...	...
10,000 - 24,999.....	602	1	↓	1	100	0	...	0	...	4	1	3	75	0	...	1	25

↓ less than .5%

• Percent of (A) adds up to 93% because there were 20 categories of ↓'s.

Table 4a

LENGTH OF FIREFIGHTERS DUTY CYCLE (IN DAYS)
IN UNITED STATES CITIES OVER 10,000; LESS THAN 7 DAYS

Population Group	No. of cities reporting (A)	Total No. (B)	Total % of (A)	FF 5 & over No.	FF 5 & over % of (B)	FF 4 & under No.	FF 4 & under % of (B)	Size unknown No.	Size unknown % of (B)
Total, all cities.	1,209	496	41	382	77	5	1	109	22
Over 500,000	21	7	33	6	28.6	0	---	1	14.3
150,000 - 499,999	22	12	54.5	12	54.5	0	---	0	---
100,000 - 249,999. .	78	24	30.8	22	28.2	0	---	2	8.3
50,000 - 99,999. . .	165	55	33.0	47	28.5	0	---	8	14.5
25,000 - 49,999. . .	321	129	40.2	110	34.3	3	2.3	16	12.4
10,000 - 24,999. . .	602	269	44.7	187	31.1	2	0.7	80	29.7

Table 4b

LENGTH OF FIREFIGHTERS DUTY CYCLE (IN DAYS)
IN UNITED STATES CITIES OVER 10,000; 7 THROUGH 28 DAYS

Population Group	No. of cities reporting (A)	Total No. (C)	Total % of (A)	FF 5 & over No.	FF 5 & over % of (C)	FF 4 & under No.	FF 4 & under % of (C)	Size unknown No.	Size unknown % of (C)
Total, all cities. . .	1,209	598	49.5	464	77.6	5	0.8	129	21.6
er 500,000	21	10	47.6	7	70	0	---	3	30
150,000 - 499,999. . .	22	8	36.4	7	87.5	0	---	1	12.5
100,000 - 249,999. . .	78	43	55.1	37	86	0	---	6	14
50,000 - 99,999. . . .	165	94	57	75	79.8	0	---	19	20.2
25,000 - 49,999. . . .	321	164	51.1	135	82.3	0	---	29	17.7
10,000 - 24,999. . . .	602	279	46.3	203	72.8	5	1.8	71	25.4

Table 4c

LENGTH OF FIREFIGHTERS DUTY CYCLE (IN DAYS)
UNITED STATES CITIES OVER 10,000; 29 OR MORE DAYS

Population Groups	No. of cities reporting (A)	Total No. (D)	Total % of (A)	FF 5 & over No.	FF 5 & over % of (D)	FF 4 & under No.	FF 4 & under % of (D)	Size unknown No.	Size unknown % of (D)
Total, all cities. . .	1,209	114	9.4	89	77.4	0	---	25	21.7
Over 500,000	21	4	19	4	100	0	---	0	---
150,000 - 499,999. . .	22	2	9.1	2	100	0	---	0	---
100,000 - 249,999. . .	78	11	14.1	9	81.8	0	---	2	18.2
50,000 - 99,999. . . .	165	16	9.7	12	75	0	---	4	25
25,000 - 49,999. . . .	321	27	8.4	23	85.2	0	---	4	14.8
10,000 - 24,999. . . .	602	54	9	39	72.2	0	---	15	27.8

Table 4d

LENGTH OF FIREFIGHTERS DUTY CYCLE (in days);
2 and 6 days; 29 or more days.

Population Group	No. of cities reporting (A)	2,3,4,5,6 and 29 thru 364 Total No. (G)	Total %of (A)	FF 5&over No.	FF 5&over %of (E)	FF 4&under No.	FF 4&under %of (E)	Size unknown No.	Size unknown %of (E)
Total, all cities.....	1,209	610	50.5	473	77.5	5	0.8	132	21.6
Over 500,000.....	21	11	52.4	10	90.9	0	..	1	9.1
250,000 - 499,999.....	22	14	63.6	14	100	0	..	0	...
100,000 - 249,999.....	78	35	44.9	31	88.6	0	..	4	11.4
50,000 - 99,999.....	165	71	43	59	83.1	0	..	12	16.9
25,000 - 49,999.....	321	156	48.6	133	85.3	3	19	20	12.8
10,000 - 24,999.....	602	323	53.7	226	70	2	0.6	95	29.4

Table 4e

CUMULATIVE PERCENTAGE OF LENGTH OF FIREFIGHTER DUTY CYCLE

Number of Days in Fire Duty Cycle	Number of Cities	Cumulative Number Cities	Cumulative % of Total Reporting (1209)
2	12	12	1
3	438	450	37.2
4	17	467	38.6
5	1	468	38.7
6	28	496	41.0
7	44	540	44.7
8	119	659	54.4
9	182	840	69.5
10	21	861	71.2
11	4	865	71.5
12	56	921	76.2
14	27	948	78.4
15	14	962	79.6
16	11	973	80.5
17	1	974	80.6
18	4	978	80.9
20	2	980	81.1
21	27	1007	83.3
22	1	1008	83.4
24	13	1021	84.4
25	1	1022	84.5
26	1	1023	84.6
27	13	1036	85.7
28	58	1094	90.5
30	27	1121	92.7
32	9	1130	93.5
33	1	1131	93.5
35	1	1132	93.6
36	3	1135	93.9
40	2	1137	94.0
42	10	1147	94.9
45	2	1149	95.0
48	1	1150	95.1
49	4	1154	95.5
56	27	1181	97.7
60	3	1184	97.9
63	7	1191	98.5
64	1	1192	98.6
72	1	1193	98.7
84	8	1201	99.3
98	3	1204	99.6
364	5	1209	100.0

Table 5

CUMULATIVE PERCENTAGE OF AVERAGE HOURS PER WEEK FIREFIGHTERS ARE ON DUTY

Average Fire Hours on Duty per Week	Number of Cities	Cumulative Number of Cities	Cumulative % of Total Reporting (1251)
37.3	1	1	0.1
40	46	47	3.8
40.3	1	48	3.8
42	142	190	15.2
42.5	2	192	15.3
44	2	194	15.5
45.8	1	195	15.6
46	1	196	15.7
46.9	1	197	15.7
47.5	1	198	15.8
48	39	237	18.9
49	1	238	19.0
50	3	241	19.3
50.2	2	243	19.4
50.3	1	244	19.5
50.4	5	249	19.9
50.5	1	250	20.0
51	1	251	20.1
51.3	2	253	20.2
52	7	260	20.8
52.2	1	261	20.9
52.3	1	262	21.0
52.5	1	263	21.0
53	2	265	21.2
53.3	1	266	21.3
53.5	1	267	21.3
54	8	275	22.0
54.6	1	276	22.1
55	2	278	22.2
55.2	1	279	22.3
56	702	981	78.4
56.3	1	982	78.5
57	1	983	78.6
57.4	1	984	78.7
57.5	1	985	78.7
57.84	1	986	78.8
58	7	993	79.4
58.1	2	995	79.5
58.6	3	998	79.8
58.7	1	999	79.8
58.8	2	1001	80.0
59	3	1004	80.3
59.5	2	1006	80.3
59.9	1	1007	80.5
60	50	1057	84.5

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Table 5 (cont'd.)

Average Fire Hours on Duty per Week	Number of Cities	Cumulative Number of Cities	Cumulative % of Total (1251)
60.1	2	1059	84.7
60.4	1	1060	84.7
60.9	1	1061	84.8
61	2	1063	85.0
61.1	2	1065	85.1
61.3	1	1066	85.2
61.4	1	1067	85.3
62	4	1071	85.6
62.3	3	1074	85.9
62.5	2	1076	86.0
63	46	1122	89.7
63.1	1	1123	89.8
63.3	1	1124	89.8
63.4	2	1126	90.0
63.5	1	1127	90.1
64	4	1131	90.4
64.3	1	1132	90.5
65	1	1133	90.6
65.3	1	1134	90.6
65.9	1	1135	90.7
66	19	1154	92.2
66.2	1	1155	92.3
66.3	1	1156	92.4
66.4	1	1157	92.5
67	3	1160	92.7
67.2	11	1171	93.6
67.4	2	1173	93.8
67.5	1	1174	93.8
68	3	1177	94.1
68.1	1	1178	94.2
69	1	1179	94.2
70	3	1182	94.5
70.2	1	1183	94.6
70.5	1	1184	94.6
71	1	1185	94.7
71.3	1	1186	94.8
72	47	1233	98.6
72.5	1	1234	98.6
72.6	1	1235	9817
73	1	1236	98.8
73.1	1	1237	98.9
73.5	1	1238	99.0
78	2	1240	99.1
78.4	2	1242	99.3
78.5	1	1243	99.4
84	7	1250	99.9
96	1	1251	100.0

Table 6

STATES HAVING LAWS REGULATING FIREFIGHTERS' HOURS

Alabama
*Arkansas
Georgia
Illinois
Indiana
Kentucky
*Maine
*Michigan
*Montana
New Hampshire
*New Jersey
*North Dakota
Ohio
Oregon
*Pennsylvania
*South Dakota
*Texas
Wisconsin

*Statute attached.

• • •

STATES HAVING NO LAWS REGULATING FIREFIGHTERS' HOURS

Arizona
California
Colorado
Florida
Iowa
Kansas
Minnesota
Mississippi
Missouri
New Mexico
North Carolina
Oklahoma
South Carolina
Tennessee
Utah
Virginia
Washington
Wyoming

[Statutes Regulating Firefighters' Hours–Attached to Letter from D. Slater, National League of Cities to W. Landis, Wage and Hour Division, Department of Labor, 7-5-74]

ARKANSAS

19-2102. Appointment of firemen in first class cities [Repealed.]

Repeal.

This section (Act Mar. 21, 1885, No. 67, § 2 (1st par.), p. 92; Feb. 27, 1893, No. 42, § 1 (3rd sentence), p. 64; C. & M. Dig., § 7709; Pope's Dig. § 9878) was repealed by Acts 1953, No. 554, § 1.

19-2103. Hours of service.–In all cities of the first class, as shown by the last Federal Census, and all subsequent censuses, which maintain or may hereafter maintain an organized paid, or part paid fire department, no employee of such department shall be compelled to be on duty more than fourteen [14] consecutive hours, except when changing from one tour of duty to the other, or in case of an epidemic among the members of the department, or a conflagration requiring the service of more than one-half [½] of the force of the department. [Acts 1923, No. 135, § 1, p. 115; Pope's Dig., § 9852.]

19-2104. Two Platoons – Arrangement of hours – Maximum hours per week – Exceptions – Epidemics, conflagrations or emergencies. – The uniformed force of the fire department shall be divided into two (2) platoons. The officers and members assigned to which shall alternate on tours of duty at intervals of not more than fifteen (15) days.

The head or chief officer of the fire department shall so arrange the working hours of the employees of such fire department so that each employee shall work, as near as practical, an equal number of hours per month; but not to exceed seventy-two (72) hours per week; provided that the head or chief officer of such department, may at his discretion, in case of an epidemic, conflagration, or

such emergency, require such employees for a greater period than herein provided to continue on duty during such epidemic, conflagration or like emergency. [Acts 1923, No. 135, §2 p. 115; Pope's Dig., § 9853; Acts 1947, No. 240, § 1, p. 512; 1957, No. 157, § 1, p. 481.]

Compiler's Note.

A last paragraph of this section was held unconstitutional in Mankin v. Dean (1958), 228 Ark. 752, 310 S. W. (2d) 477. Such paragraph read, "Provided that in cities or towns having a commission form of government with a full paid fire department, no member of the fire department in such city or town shall be required to be on regular duty more than an average of fifty-six (56) hours per week computed annually over the city's fiscal year or any unexpired portion thereof; provided, further, that said members of said fire departments, excepting administrative and maintenance personnel, shall perform their duties in twenty-four (24) hour shifts; and provided further that there shall be no reduction of salaries or rates of pay of members of said fire departments because of the number of hours prescribed in this Act as constituting the average work week of regular duty."

Amendments.

The 1947 amendment inserted the provision limiting the number of hours per week.

The 1957 amendment added a paragraph which was held unconstitutional. See compiler's note.

Emergency.

Section 2 of Acts 1947, No. 240, read: "It is found that firemen have been working an excessive number of hours each week and that this condition should be corrected in the interest of public safety. An emergency is therefore declared to exist and this act shall be in full force and effect from and after its passage and approval." Approved March 18, 1947.

CHAPTER 21–FIRE DEPARTMENT

SECTION.

19-2104.1. Cities with population of 15,000 or more–Equal number in platoons–Maximum hours–No reduction of salary–Epidemics, conflagrations or emergencies.

19-2106.1. Reimbursement for use of equipment beyond corporate limits.

19-2106.2. Liability for damages outside corporate limits.

19-2104.1. Cities with population of 15,000 or more – Equal number in Platoons – Maximum hours – No reduction of salary – Epidemics, conflagrations or emergencies. – Irrespective of the provisions of Section 2 [§ 19-2104] of Act 135 of 1923, as amended, the uniformed force of fire departments in cities of the State of Arkansas having a population of fifteen thousand (15,000) or more, according to the latest official United States Census shall be divided into platoons. The responsible chief officer of the Fire Department in cities of this State affected by this Act shall assign as near as practicable, an equal number of employees of said department to each platoon, so that each employee shall work, as near as practicable, an equal number of hours per month, but not to exceed an average of fifty-six (56) hours per week for each period of three weeks. Provided, that there shall be no reduction of salaries of employees of said fire departments because of the number of hours worked during each week as provided herein. Provided, further, that the head or chief officer of such department may, at his discretion, in case of an epidemic, conflagration or like emergency, require such employee

to continue on duty for a greater period than herein provided, during such epidemic, conflagration or like emergency. [Acts 1969, No. 326, § 1, p. 981; 1973, No. 278, § 1, p.–.]

Compiler's Note.

This section was also amended in 1973 by Acts 1973, ch. 151 which act was repealed by Acts 1973, No. 278, § 3.

Amendment.

The 1973 amendment in the second sentence substituted "an average of fifty-six (56) hours" for "64 hours" and inserted "for each period of three weeks" at the end of the sentence.

Repealing Clause.

Section 3 of Acts 1969, No. 326 repealed all laws and parts of laws in conflict therewith.

Section 3 of Acts 1973, No. 278, read: "Act 1951 of 1973 is hereby repealed."

Separability.

Section 2 of Acts 1969, No. 326, read: "If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Effective Date.

Section 2 of Acts 1973, No. 278 provided that § 1 of the act should become effective on July 1, 1973.

Emergency.

Section 4 of Acts 1969, No. 326, read: "It is hereby found and determined by the General Assembly that the maximum work week for firemen is prescribed by law as 72 hours per week; that a work week of 72 hours is unduly long and that firemen cannot give the best service to the people of this State when required to work 72 hours per week; that the maximum work week of firemen in certain cities must be reduced in order that such firemen can provide the best possible fire protection to the residents of such cities; and that this Act is immediately necessary to correct this situation. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval." Approved March 26, 1969.

Section 4 of Acts 1973, No. 278 read: "The General Assembly finds that the maximum work week of firemen in certain cities, which is presently 64 hours per week, must be reduced in order that such firemen can provide the best possible fire protection to the residents of such cities; that Act 151 of 1973 did reduce said maximum work week to 56 hours per week, but that the immediate effectiveness of said Act 151 of 1973, caused by the fact that said Act 151 contained an emergency clause, has presented the cities to which said Act 151 applies with a financial problem for which they had not budgeted, and which they need time to meet. It is necessary, therefore, that said Act 151 of 1973 be immediately repealed and replaced by this Act. An emergency is therefore declared

to exist, and this Act being necessary for the public peace, health, and safety, shall be effective immediately upon its passage and approval." Approved March 9, 1973.

19-2106.1. Reimbursement for use of equipment beyond corporate limits.—When the organized fire department of a city or town combats a fire beyond the corporate limits of the city or town, a reasonable effort must be made for ninety (90) days to obtain compensation or reimbursement for such services from the property owner involved. However, if the city or town is unable to obtain payment or reimbursement from the property owner for such services within the ninety (90) day period, the county wherein said property is located may reimburse the municipality for such service in an amount not to exceed two hundred dollars ($200). [Acts 1973, No. 114, § 1, p. —.]

19-2106.2. Liability for damages outside corporate limits.—Neither the municipality nor any municipal official or fire department official or employee involved in combatting the fire shall be liable for any damages or loss that occurs while the fire department is combatting the fire outside the corporate limits of the city or town. Provided further however, that the fire fighter [fighters] shall have the same coverage as they now have if they are injured while outside the city limits. [Acts 1973, No. 114, §2, p. —.]

* * *

MAINE

Ch. 7, Sec. 663

7. Minimum wage for firemen. Members of municipal fire fighting departments, other than volunteer or

call-departments, who are paid salaries or regular wages, are deemed to be employees within the meaning of this section and are covered by this subchapter. Firemen's wages may be paid by the municipality based upon the average number of hours worked during any one work cycle which is not to exceed 12 weeks in duration. However, 1½ times the hourly rate shall not be paid for all work done over 48 hours under this subsection (1965, c. 399, § 1.) (1967, c. 385.)

* * *

MICHIGAN

Act No. 78, Public Acts of 1973 – Approved by Governor July 31, 1973

ENROLLED HOUSE BILL NO. 4609

AN ACT to amend section 2 of Act No. 125 of the Public Acts of 1925, entitled "An act to regulate the hours of labor of employes in the fire departments of municipalities, and providing penalties for the violation thereof," being section 123.842 of the Compiled Laws of 1970.

The People of the State of Michigan enact:

Section 1. Section 2 of Act No. 125 of the Public Acts of 1925, being section 123.842 of the Compiled Laws of 1970, is amended to read as follows:

Section 2. The provisions of section 1 shall not apply

(a) To the chief officer or the assistant chief officer in command of the fire department of a municipality.

(b) To employees of a fire department who are employed subject to call.

(c) To the members or employees of a fire department when required to remain on duty by the chief officer of such department, his aides or assistants, in cases of public necessity arising from great conflagration, riot, flood, epidemic of pestilence, or disease, necessary absence of regularly employed men due to military service, or for disciplinary measures.

(d) To the members of any volunteer fire department.

(e) To any municipality which, by agreement with the collective bargaining agent representing affected employees, does not require its employees engaged in fire fighting or subject to the hazards thereof, to be on duty more than 40 hours in any consecutive 7-day period.

This act is ordered to take immediate effect.

(40)

Act 125, 1925, p. 166; Eff. Aug. 27.

AN ACT to regulate the hours of labor of employes in the fire departments of municipalities, and providing penalties for the violation thereof.

The People of the State of Michigan enact:

123.841 Fire department employees; period of duty; days off duty; work hours per week.

Sec. 1. It shall be unlawful for any municipality, or any officer or employee thereof, in municipalities which maintain or may hereafter maintain an organized paid or part-paid fire department, to require any person in the employ of the fire department who is engaged in fire fighting or subject to the hazards thereof to be on duty in such employment more than 24 hours, or to be off duty

less than 24 consecutive hours out of any 48-hour period. All persons in the employ of any organized paid or part-paid fire department who are engaged in fire fighting or subject to the hazards thereof shall be entitled to an additional 24 consecutive hours off duty in every 12-day period, beginning July 1, 1966, thereby requiring firemen to work not more than an average of 63 hours per week, and effective July 1, 1967, an additional 24 consecutive hours off duty in every 6-day period, thereby requiring firemen to work not more than an average of 56 hours per week.

HISTORY: CL 1929, 2725;—Am. 1937, p. 49, Act 38, Eff. Oct. 29;—Am. 1941, p. 65, Act 57, Eff. Jan. 10, 1942;—Am. 1947, p. 632, Oct. 335, Eff. Oct. 11;—CL 1948, 123.841;—Am. 1965, p. 151, Act 115, Eff. Mar. 31, 1966.

123.842 Persons Exempt.

Sec. 2. The provisions of section 1 shall not apply

(a) To the chief officer or the assistant chief officer in command of the fire department of a municipality;

(b) To employees of a fire department who are employed subject to call;

(c) To the members or employees of a fire department when required to remain on duty by the chief officer of such department, his aids or assistants, in cases of public necessity arising from great conflagration, riot, flood, epidemic of pestilence or disease, necessary absence of regularly employed men due to military service, or for disciplinary measures; nor

(d) To the members of any volunteer fire department.

HISTORY: CL 1929, 2726;—Am. 1937, p. 49, Act 38, Eff. Oct. 29,—Am. 1947, p. 632, Act 335, Eff. Oct. 11,—CL 1948, 123.842.

123.843 Penalty for violations

Sec. 3. Any officer or employe or agent of such municipality who shall require any employe or other person in any such fire department, save as hereinbefore excepted in section 2 of this act, to be on duty in such employment for a longer time than that hereinbefore provided, or to be off duty for a lesser time than that hereinbefore provided, shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not more than 100 dollars or by imprisonment in the county jail for not more than 3 months, or by both such fine and imprisonment.

HISTORY: CL 1929, 2727,—CL 1948, 123.843.

Sec. 4. (This was a repeal section.)

HISTORY: CL 1929,2728;—Rep. 1945, p. 406, Act 267, Imd. Eff. May 25.

MONTANA

11-1931. Hours of work of members of paid fire departments in cities of first class. The city council, city commission, or other governing body in cities of the first class, shall divide all members of the paid fire department into platoons of three shifts. The members of each shift shall not be required to work or be on duty more than eight (8) hours of each consecutive twenty-four hours, except in the event of a conflagration or other similar emergency when such members or any of them may be required to serve so long as the necessity therefor exists. Each member shall be entitled to at least one (1) day off duty out of each eight-day period of service without loss of compensation.

11-1934. Hours of work of members of paid fire departments in second class cities. The city council, city

commission, or other governing body in cities of the second class, shall divide all members of the paid fire department into platoons of three shifts. The members of each shift shall not be required to work or be on duty more than eight (8) hours of each consecutive twenty-four hours, except in the event of a conflagration or other similar emergency when such members or any of them may be required to serve so long as the necessity therefor exists. Each member shall be entitled to at least one (1) day off duty out of each eight-day period of service without loss of compensation.

History: En. Sec. 1, Ch. 136, L. 1939.

Collateral References

Municipal Corporations 194.

62 C.J.S. Municipal Corporations § 600.

* * *

NEW JERSEY

40A:14-46 Two-platoon system in certain municipalities having a paid fire department and force.

The governing body of a municipality, having a paid fire department and force, by resolution, may divide the members and officers of such department and force into 2 platoons, one platoon serving 24 hours of duty while the other is off duty for the same period of time.

Source: R.S. 40:47–38.

40A:14-47 Two-platoon system for fire department in certain municipalities; establishment; referendum.

In municipalities, except cities of the first class, wherein a proposal for a 2-platoon system shall have been adopted the governing body of the municipality, or the

board or officer in charge of a paid or part-paid fire department and force, shall divide the paid members and officers of the said department and force into 2 platoons, one designated as a day force, the other as a night force. Each force, respectively, shall alternate the hours of duty on every fourth day. The hours of duty of the day force shall be from 8:00 A.M. to 6:00 P.M. and the night force from 6:00 P.M. to 8:00 A.M. the following morning, except that on every fourth day, for the purpose of such alternation the number of said hours of duty may be exceeded but one force shall be off duty at all times, except as otherwise provided by law.

The 2-platoon system shall be inoperative unless and until a proposal for such a system shall have been submitted to and adopted by the legal voters of the municipality at a primary or general election or at an election held for that purpose. It may be submitted as a public question, in the manner prescribed by law, by resolution of the governing body, or by filing with the governing body of the municipality a petition for such submission signed by at least 10% of the legal voters of the municipality in substantially the following form:

"(Insert the name of the municipality and state the question.)" The ballot shall contain 2 squares to the left of the question, one with the word "Yes", the other with the word "No", respectively, to the right thereof. The ballot shall also contain instructions to voters to vote by marking a cross (X), or plus sign (+) or check mark ( ) in the square according to their choice. If voting machines are used a vote of "Yes" or "No" shall be equivalent to such markings, respectively.

The municipal clerk shall forthwith canvass the returns of the election and shall certify the results thereof to the

governing body of the municipality. If a majority of the legal voters voting on the question shall vote "Yes", the 2-platoon system shall become operative and the governing body or the board or officer in charge of said paid or part-paid fire department and force shall then proceed to establish such system.

This section shall not be construed to repeal or modify in any form any existing law relating to salaries, annual vacations, sick or disability leave of any of the members or officers of the paid or part-paid fire department or force.

Source: R.S. 40:47-39; 40:47-40 amended 1938, c. 276; 40:47-42; 40:47-43; 40:47-44; 40:47-45; 40:47-46; 40:47-47; 40:174-66; 40:174-67; 40:174-68; 40:174-69; 40:174-70; 40:174-71; 40:174-72.

40A:14-48 Two-platoon system for fire department in cities of the first class: emergency service; compensatory time off.

In cities of the first class, the governing body, by resolution, or the board of fire commissioners or officials in charge of a fire department and force, may divide the members and officers of such fire department and force into 2 platoons, one serving while the other is off duty. Each platoon, respectively, shall alternate the hours of duty for the purpose of alternating the day force with the night force and vice versa, and for the purpose of giving each platoon 24 hours off duty every 6 days. The hours of duty of the day force shall be from 8:00 A.M. to 6:00 P.M. and the night force from 6:00 P.M. to 8:00 A.M. the following morning.

In cases of conflagration or other emergency the officials in charge of the fire department and force shall have authority to retain on duty any or all members and

officers of such department and force during the period of the emergency, but in any such case and within 12 months thereafter, such members or officers shall be given a day or proportion thereof off for extra time so served by them during the emergency.

Nothing contained herein shall be deemed to repeal or modify existing laws relating to salaries, annual vacations or sick or disability leaves of the members or officers of such department or force.

Source: R.S. 40:174-132; 40:174-133; 40:174-134; 40:174-135; 40:174-136; 40:174-137; 40:174-138; 40:174-139; 40:174-140.

40A:14-49 Fifty-six hour week for members and officers; referendum.

The governing body of any municipality, by ordinance, may adopt a schedule of hours of actual duty for the members and officers of a paid or part-paid fire department and force based upon an average of 56 hours per week in any 6-week cycle, but in cases of emergency the officials in charge shall have authority to retain any uniformed member or officer on duty during the period of the emergency, and in any such case and within 12 months thereafter such member or officer shall be given hours off from the average of 56 hours per week in any 6-week cycle to compensate him for the extra hours served by him during such emergency.

Any such ordinance shall be inoperative unless and until it shall be submitted to and adopted by the legal voters of the municipality at a primary or general election or an election held for such purpose.

Said adoption may be submitted as a public question in the manner prescribed by law, by resolution of the governing body or by filing with the governing body a

petition for such submission, signed by at least 10% of the registered voters of the municipality. The question shall be submitted substantially on the ballot as follows:

Insert the name of the municipality and state the question. "Shall the ordinance providing that the uniformed members and officers of its fire department and force shall be maintained in such manner as to provide that no member or officer thereof shall be required to remain on duty in excess of 56 hours per week in any 6-week cycle except in cases of emergency be adopted?"

If a majority of the legal voters voting on such question vote in favor of the adoption, the ordinance on and after January 1 following such election shall become operative.

Source: C. 40:47-47.2 (1948, c. 73, s. 1 amended 1949, c. 100, s. 2); C. 40:47-47.3 (1948, c. 73. s. 2 amended 1949, c. 100, s. 3); C. 40:47-47.4 (1948, c. 73, s. 3 amended 1949, c. 100, s.4).

* * *

NORTH DAKOTA

GENERAL PROVISIONS

34-01-08 Maximum hours for cities in this state having a population of *five thousand* or more inhabitants shall work for such city more than eight hours in any one day or more than fifty-six hours in any one week except in case of emergency. This section shall not apply to a public officer who is elected to his said office, nor to members of the police force, nor to the members and employees of the fire department, nor to the head of any department of the city.

Source: S.I., 1935, ch. 201, § 1; 1937, ch. 177, § 1; R.C. 1943, § 34-0108.

Cross-Reference.

Civil Service for city employees, see ch. 40-44.

Collateral References.

Labor Relations 1367, 1379.

48 Am. Jur. 2d, Labor and Labor Relations, § 1863.

51B C.J.S. Labor Relations, § 1197; 56 C.J.S. Master and Servant, § 17.

34-01-09. Violation of hours of employment for city employees – Penalty. – Any employee who shall willfully violate section 34-01-08, and any city officer and any member of any board, bureau, or commission having charge of or supervision over the employment of any such employee who shall require such employee to violate such section, is guilty of a misdemeanor and shall be punished by a fine of not less than ten dollars nor more than one hundred dollars, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment.

Source: S.L. 1935, ch. 201, § 2; 1937, ch. 177, § 2; R.C. 1943, § 34-0109.

34-01-09.1. Maximum hours of labor. – No employee, other than the chief of a fire department in any city of North Dakota with a population of twenty thousand or more inhabitants, shall be required to work more than one hundred and forty-four hours in any two-week period but shall be subject to call while off duty in case of emergency not to exceed more than one hundred and forty-four hours in this two-week period. Any person who shall violate any provision of this section shall be guilty of a misdemeanor and shall be punished by a fine

of not less than twenty-five dollars nor more than one hundred dollars.

Source: S.L. 1949, ch. 223, §§ 1, 2; R.C. 1943, 1957 Supp., §§ 34-01091, 34-01092.

Note.

The provisions of section 34-01-09.2 have been combined with this section.

Collateral References.

Labor Relations 1351-1420.

48 Am. Jur. 2d, Labor and Labor Relations, §§ 1838-1865.

51B C.J.S. Labor Relations, §§ 1186-1209; 56 C.J.S. Master and Servant, §§ 14-17.

Beauty Shops, control of hours of work by statute or ordinance regulating, 56 ALR 2d 892.

34-01-09.2. Penalty.—Repealed by omission from this code.

Note.

The provisions of this section have been combined with section 34-01-09.1.

* * *

PENNSYLVANIA

THIRD CLASS CITY CODE OF PENN.
53 PURDON'S STATUTES 37103

Section 2103. Platoon System; Hours of Service; Vacation; Sick Leave.—The director of the department having charge of the fire bureau in each city shall divide the officers and members of companies of the uniformed

fire force in the employ of such cities, and any other firemen and drivers regularly employed and paid by the city, excepting the chief engineer and assistant chiefs, and those employed subject to call, into two bodies or platoons to perform service during such hours as the director shall fix, except as herein otherwise provided.

The hours of day service shall not exceed ten, commencing at eight o'clock in the morning, the hours of night service shall not exceed fourteen, commencing at six o'clock in the afternoon; and the hours of day service shall not exceed fifty hours in any one calendar week, and the hours of night service shall not exceed seventy hours in any one calendar week, unless the hours of day and night service shall be equalized, in which case neither the hours of day or night service shall exceed fifty-six in any one calendar week: Provided, That for the duration of any war in which the United States is engaged, and six months thereafter, the hours of service may exceed the number hereinbefore provided as the maximum number of hours of service, and in such cases, council shall provide for the payment of extra compensation for any hours of service, at the same rate as paid for regular service in excess of such maximum hours of service. The employes of such fire forces shall be allowed to have at least twenty-four consecutive hours of rest in every calendar week, to have an annual vacation of not less than fourteen working days, and shall be entitled to twenty-one days sick leave annually without diminution of the salary or compensation fixed by ordinance. In those instances in which sick leave exceeds four days at any one time, it shall be necessary for the employe to present evidence satisfactory to the director of the department showing either injury, hospitalization, or

illness attended to by a physician. In cases of riot, serious conflagration, times of war, public celebrations, or other such emergency, the chief engineer of the bureau of fire, or the assistance chief deputy, or chief officer in charge at any fire shall have the power to assign all the members of the fire force to continuous duty, or to continue any member thereof on duty, if necessary. No member of any of said shifts, bodies or platoons shall be required to perform continuous day service or continuous night service for a longer consecutive period than two weeks, nor be kept on duty continuously longer than ten hours in the day shifts, bodies or platoons or fourteen hours in the night shifts, bodies or platoons, excepting as may be necessary to equalize the hours of duty and service, and also excepting in cases of emergency, as above provided. (Amended July 19, 1957, P.L. 1012.)

Section 2104. Fire Marshal; Powers. – Every city may, by ordinance, provide for the creation of the office of fire marshal who shall be appointed by the mayor, by and with the approval and consent of council, biennially. The fire marshal and his assistants, if council shall provide for such assistants, shall inspect all constructions or buildings within the city or upon property owned or controlled by the city or a municipality authority of the city within the Commonwealth, whether public, private, or business, and shall enforce all laws of the Commonwealth and ordinances of the city relating to such constructions or

* * *

SOUTH DAKOTA

CLASSIFICATION AND CONDITIONS OF EMPLOYMENT 3-6-18

duties of employees, within the time designated, the classifications, the minimum essentials of efficiency, the uniform system of efficiency ratings, the equitable salary scale, the plan for pooling and transferring clerks, stenographers, clerical assistants, and common and skilled laborers, and the plan for co-ordination of duties of employees, submitted by the director of employment shall thenceforth be in full force and effect. Such classifications, minimum essentials of efficiency, uniform system of efficiency ratings, equitable salary scale, plan for pooling and transferring clerks, stenographers, clerical assistants, and common and skilled laborers and plan for co-ordination of duties of employees shall continue in force and effect until amended or revised by a majority vote of the board of finance at any regular meeting.

Source: SL 1927, ch 73; SDC 1939, 55.2701 (9).

Cross-Reference.

Rules and regulations, procedure for adoption, §§ 1-26-2 to 1-26-14.

3-6-17. Maximum hours of duty for public employees – Special provision for city firemen. – No employee of the state or any of its political subdivisions, nor of any municipal corporation shall be employed more than eight hours in any day, nor more than forty-eight hours in any calendar week except in case of unavoidable emergency, and except that full-time employees of city fire departments shall have their own hours of employment governed by a mutual agreement with respective

municipal corporations and shall not exceed one hundred twelve hours during a fourteen-day period.

Source: SL 1933 (SS), ch 10, § 2; R.C. 1939, § 17.0103; SL 1949, ch 75,–; 1951, ch 93, § 1; 1959, ch 100; 1966 ch 63, § 12.

Cross-References.

Legislative employees, hours of duty, § 2-5-7.

Record of attendance for state employees, § 3-6-11.

Workmen's Compensation Computation.

Statute which fixes maximum number of hours public employee may be required to work is not applicable in computing daily wage under workmen's compensation statute. Millage v. Canton Township (1949) 73 SD 26, 38 NW 2d 755.

Opinions of Attorney General.

"Emergency" as applied to circumstances arising at Yankton state hospital, Report 1949-50, p. 209.

Not unlawful to employ in excess of eight hours, permitted in emergency cases, Report 1955-56, pp. 278, 318.

Overtime pay permitted when caused by unavoidable emergency, Report 1943-44, p. 150; 1955-56, p. 299.

Overtime pay permitted when employee works hours beyond those contemplated at time of employment, Report 1943-44, p. 215.

3-6-18. Public officers and agricultural workers exempt from restriction on hours.–Nothing in § 3-6-17 shall be construed to apply to public officers elected or appointed as such for any specific term or part of a term.

* * *

TEXAS

Art. 1269p CITIES, TOWNS AND VILLAGES Title 28

Art. 1269p. Hours of labor and vacations of firemen and policemen in certain cities.

Cities over 25,000; hours of labor

Section 1. No member of any fire department or police department in any city of more than twenty-five thousand (25,000) inhabitants shall be required to be on duty more than six (6) days in any one week.

Exception for emergencies

Sec. 2. The preceding subdivision shall not apply to cases of emergency.

Cities over 30,000; vacations

Sec. 3. Each member of any such departments in any city of more than thirty thousand (30,000) inhabitants shall be allowed fifteen (15) days vacation in each year with pay; provided that the provisions of this Section of this Act shall not be applied to any member of any such department in any city of more than thirty thousand (30,000) inhabitants unless such member shall have been regularly employed in such department or departments for a period of at least one (1) year.

Number of vacation days and holidays

Sec. 3a. Firemen and Policemen shall have the same number of vacation days and the same number of holidays, or days in lieu thereof, that is granted to other municipal employees.

Federal Census

Sec. 4. Each preceding Federal Census shall determine the population.

Designation of vacation days and holidays

Sec. 5. The city officials having supervision of the fire department and police department shall designate the days of the week upon which each such member shall not be required to be on duty, and the days upon which each such member shall be allowed to be on vacation.

Cities over 10,000; hours of labor

Sec. 6. It shall be unlawful for any city having more than ten thousand (10,000) inhabitants but not more than sixty thousand (60,000) inhabitants, according to the last preceding Federal Census, to require or permit any fireman to work more than seventy-two (72) hours during any one calendar week. It shall be unlawful for any city having more than sixty thousand (60,000) inhabitants but not more than one hundred twenty-five thousand (125,000) inhabitants, according to the last preceding Federal Census, to require or permit any fireman to work more than an average, during a calendar year, of sixty-three (63) hours per week. It shall be unlawful for any city having more than one hundred twenty-five thousand (125,000) inhabitants, according to the last preceding Federal Census, to require or permit any fireman to work more than an average, during a calendar year, of sixty (60) hours per week.

Provided further, that in any city having more than ten thousand (10,000) inhabitants, according to the last preceding Federal Census, the number of hours in the work week of members of the fire department whose duties do not include fighting fires, including but not limited to mechanics, clerks, investigators, inspectors, fire marshals, fire alarm dispatchers and maintenance men, shall not exceed the number of hours in the normal work week of the majority of the employees of said city other than firemen and policemen.

Provided further, that in computing the hours in the work week of firemen subject to the provisions of the preceding paragraph, there shall be included and counted any and all hours during which such firemen are required to remain available for immediate call to duty by continuously remaining in contact with a fire department office by telephone or by radio.

Provided, however, that in any such city having more than ten thousand (10,000) inhabitants, in the event of an emergency, firemen may be required to work more than the maximum number of hours herein provided; and in such event firemen working more than the maximum hours herein provided shall be compensated for such overtime at a rate equal to one and one-half times the compensation paid to such firemen for regular hours.

Cities over 10,000; overtime

Sec. 6A. It shall be unlawful for any city having more than ten thousand (10,000) inhabitants, according to the last preceding Federal Census, to require or permit any policeman to work more hours during any calendar week than the number of hours in the normal work week of the majority of the employees of said city other than firemen and policemen.

Provided, however, that in any such city having more than ten thousand (10,000) inhabitants, in the event of an emergency, policemen may be required to work more than the number of hours in the normal work week of the majority of other city employees; and in the event policemen are ordered to work a greater number of hours than the number of hours in such normal work week of other city employees, such policemen shall be

compensated for any such overtime at a rate equal to one and one-half times the compensation paid to such policemen for regular hours.

Effectiveness of Act

Sec. 6B. The governing body of each city which comes under the provisions of this Act[1] shall put into effect the provisions hereof, without referendum or election, on or before the first day of the next fiscal year of such city after the effective date of this Act.

Working extra hours

Sec. 7. The provisions of this Act shall not be construed to prevent firemen and policemen from working extra hours when exchanging hours of work with each other with the consent of the department head.

Penalty

Sec. 8. The city official having charge of the fire department or police department in any such city who violates any provision of this Act shall be fined not less than Ten ($10.00) Dollars nor more than One Hundred ($100.00) Dollars, and each day on which said city official shall cause or permit any Section of this Act to be violated shall constitute and be a separate offense.

Defendant's Exhibit No. 5

CITY OF LOMPOC CALIFORNIA
CITY HALL
119 WEST WALNUT AVENUE
TELEPHONE REgent 6-1261

September 27, 1974

Mr. Charles S. Ryhne
National Institute of Municipal
Law Officers
839 17th Street, N.W.
Washington, D.C. 20006

Dear Mr. Ryhne:

I note that you have been retained as Chief Counsel for the National League of Cities to take on the 1974 Fair Labor Standards Act as it applies to the states or local governments.

I have been fighting what I consider to be a lonely skirmish on this battleground. The attached materials document my point. To put it bluntly the Department of Labor, in its approach to compensatory time, is flat wrong and will not condescend to think about changing its position but instead cites a case which does not apply to compensatory time.

So far as I am concerned this City is going to continue to pay compensatory time and if the Department of Labor objects we will win the point in court.

You may find that the point I urge is of some persuasive value in your case. I presume your case will be

one of urging states' rights, and my point indicates what kind of a right is interfered with: i.e. the right for a public employee and his employer to decide upon compensatory time as compensation for labor.

I will be in San Diego 7th and 8th if you wish to discuss the point further.

Very truly yours,

/s/ Alan Davidson
ALAN DAVIDSON
City Attorney

June 3, 1974

U.S. Department of Labor
Washington, D.C.

ATTENTION: Assistant Secretary Bernard E. Delury

Gentlemen:

We understand that it is the interpretation of the Department of Labor that under the 1974 Fair Labor Standards Act that cities may no longer give compensatory time to employees who have worked overtime, but must only pay them money. It was our interpretation of the law that "comp." time could still be given, but that at a rate of time and one-half.

If it is the department's position that only money can be paid for overtime, we would appreciate its specifying the section of the Code or Act upon which such an interpretation is based.

Very truly yours,

ALAN D. DAVIDSON
City Attorney

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WASHINGTON, D.C. 20210

Mr. Alan D. Davidson
City Attorney
119 West Walnut Ave.
Lompoc, California

Dear Mr. Davidson:

Your letter of June 3, 1974 to Assistant Secretary of Labor Bernard E. Delury has been referred to this office for a reply. In your letter you question the Department's position regarding compensatory time off under the Fair Labor Standards Act.

The overtime compensation requirements of the Act are discussed in the enclosed bulletin, Part 778. Section 778.106 indicates that the payment of both the minimum wage and overtime compensation due an employee must ordinarily be made at the regular payday for the period in which the work was performed. An employer may not credit an employee with compensatory time (even at a time and one-half rate) for overtime earned which is to be taken at some mutually agreed upon later date subsequent to the end of the pay period in which the overtime was earned, rather than pay cash for the overtime as it is earned.

However, it is permissible for the employer employing one at an hourly rate, or at a fixed salary for a fixed workweek, to lay off the employee a sufficient number of hours during some other week or weeks of the same pay period to offset the amount of overtime worked (i.e.

at the time and one-half rate) so that the desired wage or salary for the pay period covers the total amount of compensation, including overtime for each week taken separately. Under this method the employer does not average hours over a period longer than a week. He controls the earnings by controlling the number of hours the employee is permitted to work.

If you need additional information, you may wish to contact our office in Room 504, 6777 Hollywood Boulevard, Hollywood, California 90028, phone 213-472-3181, Ext. 373. The people in that office will be happy to help you in any way possible.

Sincerely,

/s/ William Hoffman
William Hoffman, Chief
Division of Minimum Wage
and Hour Standards
Wage and Hour Division

Enclosure

Section 778.106 Time of Payment.

There is no requirement in the Act that overtime compensation be paid weekly. The general rule is that overtime compensation earned in a particular workweek must be paid on the regular pay day for the period in which such workweek ends. When the correct amount of overtime compensation cannot be determined until some time after the regular pay period, however, the requirements of the Act will be satisfied if the employer pays the excess overtime compensation as soon after the regular pay period as is practicable. Payment may not be delayed for a period longer than is reasonably necessary for the employer to compute and arrange for payment of the amount due and in no event may payment be delayed beyond the next pay day after such computation can be made. Where retoactive wage increases are made, retroactive overtime compensation is due at the time the increase is paid, as discussed in §778.303. For a discussion of overtime payments due because of increases by way of bonuses, see §778.209.

CITY OF LOMPOC
CALIFORNIA
CITY HALL
119 WEST WALNUT AVENUE
TELEPHONE REgent 6-1261

July 16, 1974

William Hoffman
Chief, Division of Minimum Wage
and Hour Standards
Wage and Hour Division
United States Department of Labor
Washington, D. C. 20210

Thanks to your kind reply, we have received the United States Department of Labor Interpretive Bulletin No. 788 which is part of Title 29 of the Code of Federal Regulations relating to overtime compensation. This interpretive bulletin interpreted the Fair Labor Standards Act of 1938. It is still being used to interpret the recently adopted Fair Labor Standards Act of 1974, which added public employees to this Act.

Section 778.106 covers the question of when payment for overtime shall be made and quite properly indicates that payment in cash shall be made at the earliest payday. Delays are only allowed when computation cannot immediately be made. This interpretation is most correct in relating to cash payments because such delayed payment can be less than full payment, for several reasons.

This section has been applied to overtime compensation which compensation will be in the form of compensatory time (leave from work) at the rate of one

and one-half times the overtime worked. This means under strict application of section 778.106, and as reflected in your letter on the subject, that any time and one-half compensatory time must be given the same pay period. Because, however, the practical necessities of scheduling work and workloads do not fit into a compensatory scheme designed to discharge the employers obligation in a one or two-week or even one-month payroll period, the practical application means that compensatory time cannot be used. (Compensatory time is given employees at the time of slack periods.) Slack periods relate to the demands of the work, not pay theories and practices. *The upshot of the interpretation is that the giving of compensatory time by public bodies to their employees is effectively prohibited under the 1974 Act.* A review of the provisions of the 1974 Act do not show an intention of Congress to change the salutary and often practiced granting of compensatory time to public employees.

There are several considerations relating to compensatory time which should be seriously considered by the Secretary of Labor:

1. If the employee (whom we are trying to protect) prefers compensatory time off to money, and many of them do, he should not be thwarted in the receiving of such time by rules promulgated by the Department. Such an important principle should be clearly and exactly decided by Congress itself.

2. Many jurisdictions have varying work loads but may not have the money to pay the time and one-half in cash. To require the jurisdiction to pay money and not be able to use slack work periods for this compensation is a consequence not clearly indicated by Congress.

Compensatory time off in public employment is 99 percent of the time granted to an employee at his request, he tacks it onto weekends and vacations. Compensation time is of great utility to the employer and the employee alike and should not be thrown out by these rules.

3. There is no reason why there could not be a reasonable limit on the granting of compensatory time. Section 778.106, or a similar section, could provide that if compensatory time is to be given it shall be given at the same rate as is overtime pay but must be given within a reasonable time, i.e., six months or one year.

4. These rules are backing public jurisdictions into a guaranteed 40-hour week. Such a principle should only be adopted by Congress, and clearly so. The reason is this: if the time and one-half is paid in cash the next pay period, and then three months later a slack period appears and the employer gives the employee time off, this time off will be *without pay*. (If this time off were credited against the overtime account, it would be *with pay*.) Thus, if the employer who has ups and downs in his work load must allow employees time without pay because he doesn't have the money to pay them at the time, it is going to be creating a hardship on the employees. They will have pay periods where they will get large overtime pay and pay periods where they will get small pay. This causes hardship and resultant poor employee relations, with increased union activity and demand for guaranteed minimum 40-hour weeks. We request that the Department not back public jurisdictions into such a corner by the inadvertent application of a section relating to payment in cash.

This is a request that the Secretary of Labor consider and enter into an adoption of interpretive rules relating

to compensatory time used as compensation under the Fair Labor Standards Act, and that he (or whoever) specifically either provide that Section 778.106 does not apply to non-cash payment or adopt a new section covering the problems raised by the granting of compensatory time.

This question is not merely the concern of the undersigned. From materials I have observed, the National League of Cities has published this interpretation and I know from experience it is being followed by most public jurisdictions. I have determined this is particularly true in California. The problems caused by applying this section to compensatory time are immediate and I ask that you move quickly on this matter.

Yours truly,

/s/Alan D. Davidson
ALAN D. DAVIDSON
City Attorney

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WASHINGTON, D.C. 20210

Alan D. Davidson, Esq.
City of Lompoc
119 West Walnut Avenue
Lompoc, California 93436

Dear Mr. Davidson:

This is in reply to your letter of July 16, 1974, regarding the Department's position with respect to compensatory time-off under the Fair Labor Standards Act.

There is not much that we can add to that which we wrote you on July 9, 1974. By its own terms, the Act requires that overtime compensation be computed and paid on the basis of each workweek standing alone. This is a long established principle which has been in effect since the law's inception and which has been upheld by the courts. See the Supreme Court's opinion in *Walling* v. *Harnischfeger Corporation*, 325 U.S. 427 (1945). That decision indicates that overtime payments must be made within the regular pay period, unless for some reason delay is required to allow the employer to compute overtime payments. Where delay is unavoidable, payment must be made as soon as practicable. Neither the Administrator of the Wage and Hour Division nor the Secretary of Labor has specific authority to waive this requirement.

There is no indication that Congress, in enacting the 1974 amendments to the Act, contemplated any change in the requirement that overtime due under the Act must be paid in cash upon completion of the pay period and not in the form of compensatory time-off at some subsequent date.

Sincerely,

/s/ William Hoffman
William Hoffman, Director
Division of Minimum Wage
and Hour Standards
Wage and Hour Division

Defendant's Exhibit No. 6

CITY OF CAPE GIRARDEAU
CAPE GIRARDEAU, MISSOURI 63701

October 15, 1974

Mr. Jack. R. Younce
Area Director
Wage and Hour Division
Department of Labor
Room 563, 210 North 12th Street
St. Louis, Missouri 63101

Mr. James McDonald
Compliance Officer
Room 142, Federal Office Building
Box 554, 339 Broadway
Cape Girardeau, Missouri 63701

Re: Minimum Wage Law Compliance

Gentlemen:

By this letter I must inform you that the City of Cape Girardeau, Missouri, will not comply in any fashion with the Fair Labor Standards Act of 1974 and will make itself available for no audits or inspections of any kind. After careful consideration and study, it has been determined that the Fair Labor Standards Act of 1974 is and shall be treated as being unconstitutional.

It is our every intention and our desire to obey the law. We take this action very regretfully and after much

soul-searching. However, in view of the nature of local governments, the tradition and growth of local governments, and the constitutional basis for local governments, we can take no other action but to deny the constitutionality of this Act as it applies to our City.

Please be advised, however, that in the event this Act is ruled to be constitutional, the City of Cape Girardeau, of course, will comply with the Fair Labor Standards Act of 1974 and will do so fully and immediately. However, we expect the test case on the Fair Labor Standards Act of 1974 to be decided in favor of States and Local Governments and against the Federal Congress, i.e. unconstitutional.

Again, I want to say that we take this action not in an effort to beat the law or in an effort to break the law, but because of our considered and counseled opinion that this Fair Labor Standards Act of 1974 is, in fact, not the law because of its unconstitutionality.

We will await communication with you on the matter and if we can further clarify our position in any way, please feel free to call or contact me.

Very truly yours,

Thomas M. Utterback
City Attorney

Defendant's Exhibit No. 7

U.S. DEPARTMENT OF LABOR
OFFICE OF THE SOLICITOR
911 WALNUT STREET – ROOM 2106
KANSAS CITY, MISSOURI 64106

November 20, 1974
KCL:DM:DRB

Mr. Thomas M. Utterback
City Attorney
City of Cape Girardeau
Cape Girardeau, Missouri 63701

Re: *Brennan* v. *City of Cape Girardeau, Missouri*

Dear Mr. Utterback:

Enclosed is a copy of a complaint which we have sent for filing in the United States District Court at St. Louis, Missouri. Formal service will be made upon Mr. Lawley in due course.

Should you so desire, we would be pleased to discuss the case with you at an early date.

Sincerely,

T.A. Housh, Jr.
Regional Solicitor

By /s/ Donald McCoy
Donald McCoy
Attorney

Enclosure

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

PETER J. BRENNAN, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR,	)	CIVIL ACTION
Plaintiff,	)	FILE NO.
v.	)	
CITY OF CAPE GIRARDEAU, MISSOURI,	)	
Defendant.	)	

COMPLAINT

Plaintiff brings this action to enjoin defendant from violating the provisions of section 15(a)(2) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 *et seq.*), hereinafter called the Act, including the restraint of any withholding of payment of minimum wages and overtime compensation found by the Court to be due employees under the Act.

I

Jurisdiction of this action is conferred upon the Court by section 17 of the Act.

II

Defendant, the City of Cape Girardeau, Missouri, is a political subdivision of the State of Missouri located in the county of Cape Girardeau, Missouri, within the jurisdiction of this Court.

III

The activities of defendant, a public agency as defined by section 3(x) of the Act, were, and are, related and performed through unified operation or common control for a common business purpose, and have, since May 1, 1974, constituted an enterprise within the meaning of section 3(r) of the Act.

IV

At all times since May 1, 1974, said enterprise has had employees handling, selling, or otherwise working on goods that have been moved in or produced for commerce and has been a public agency as defined in section 3(x) of the Act. Said enterprise, therefore, was and is an enterprise engaged in commerce or in the production of goods for commerce as defined in section 3(s)(5) of the Act.

V

Defendant has violated and is violating the provisions of sections 6(b) and 15(a)(2) of the Act by failing to pay to certain of its employees, for their employment in an enterprise engaged in commerce or the production of goods for commerce, wages at rates not less than $1.90 per hour since May 1, 1974.

VI

Defendant has violated the provisions of section 7 and 15(a)(2) of the Act by employing certain of its employees in an enterprise engaged in commerce or in the production of goods for commerce, for workweeks longer than 40 hours since May 1, 1974, without compensating said employees for their employment in excess of 40 hours in such workweeks at rates not less than one and one-half times the regular rates at which they were employed.

VII

As a result of the violations alleged in paragraphs V and VI hereof, defendant has unlawfully withheld and continues to withhold unpaid minimum wages and overtime compensation due certain of its employees.

VIII

Defendant has repeatedly and willfully violated the aforesaid provisions of the Act. A judgment permanently enjoining and restraining the violations herein alleged including the restraint of the continued withholding of unpaid minimum wages and overtime compensation due defendant's employees is specifically authorized by section 17 of the Act.

WHEREFORE, cause having been shown, plaintiff prays judgment permanently enjoining and restraining defendant, its officials, agents, servants, employees, and those persons in active concert or participation with defendant who receive actual notice thereof, from violating the provisions of section 15(a)(2), including the restraint of any withholding of payments of unpaid

minimum wages and overtime compensation found by the Court to be due to defendant's employees, together with interest thereon from the dates when such amounts became due, and for such other and further relief as may be necessary and appropriate, and costs.

William J. Kilberg
Solicitor of Labor

T. A. Housh, Jr.
Regional Solicitor
Room 2106, 911 Walnut Street
Kansas City, Missouri 64106
(816) 374-2281

/s/ Donald McCoy
Donald McCoy
Attorney
United States Department of Labor

and

Donald J. Stohr
United States Attorney

Office of the Attorney
1114 Market Street
St. Louis, Missouri 63101
(314) 622-4205

By
Michael W. Reap
Assistant United States Attorney

Attorneys for Plaintiff

Defendant's Exhibit No. 8

CAPE GIRARDEAU SOUTHEAST
MISSOURIAN 11-17-74

AUTONOMY OF LOCAL GOVERNMENT
THREATENED BY LABOR REGULATION
BY MAYOR HOWARD C. TOOKE

On Oct. 15, 1974, the City of Cape Girardeau gave written notice to the Wage and Hour Division of the Department of Labor that the city believes the application of the Fair Labor Standards Act to minicipalities is unconstitutional. This action was not taken hastily, nor was it taken without full consideration of the issues involved and the consequences.

At issue in this matter is whether the citizens of this country in establishing their government and electing their representatives at various levels of government, intended those at any one level to interfere with or dictate to those at another level.

Specifically, we do not believe that the federal government has the constitutional authority to inject itself into employe matters which should be settled at the local level. Nor do we believe that the same standards of wages and hours and overtime compensation should prevail in every city in the United States. Substantial differences in work requirements exist now between various cities, and we seen no valid reason to standardize local work assignments along federal lines.

Case in point: Cape Girardeau over a period of many years developed a workable system for fire protection–one that was within their financial

capabilities and yet allowed for a fire department staffed entirely of professional fire fighters and not dependent upon volunteers for manpower as are a great many departments.

Under this system, the Cape Girardeau Fire Department achieved a degree of professional efficiency second to none. The city takes a great pride in its fire department: available evidence indicates also a great personal pride in their work on the part of individual firemen. Long tenure in employment by many firemen suggests satisfaction with their conditions of employment.

This has all been accomplished at the local level, without help or hindrance from other levels of government. However, now the federal government is injecting itself into purely local government in this instance, as well as others. We think that financial consequences of such regulation will create great fiscal problems for many cities.

In Cape Girardeau, the fire department budget alone, now at about $350,000 annually, would increase by up to $400,000 annually if the present level of service were maintained by existing personnel. By hiring additional employes and eliminating overtime, the cost could be brought down to where the increase would be about $250,000.

Based on the present assessed valuation of property in Cape Girardeau, this increase would be a minimum of 40 cents per $100 assessed valuation per year; this compares to our existing general revenue tax levy of 50 cents. To send our tax levy from 50 cent to 90 cents would be a drastic change for the taxpayers of this city.

Many cities faced with such massive increase in costs will consider the alternate course of reduction in level of service, and herein lies a real threat to cities such as ours—that because of increased costs artificially generated by federal bureaucracy, our local government services might be reduced. For instance, a city government could decide to get by with fewer firemen on duty and depend upon securing additional manpower by calling out off-duty personnel. Obviously this would be much less desirable than our present system.

Another system being seriously considered by quite a few cities is that of creating a category of employes known as "public safety officers" who would have duties as both policemen and firemen as the need developed. This would result in monetary savings, but not in strict professionalism, and would not meet with enthusiasm from either policemen or firemen.

Any of these radical adjustments are totally unneces- if the federal government will only stay out of the regulation of local government, and allow each unit of local government to determine the level of service necessary to meet the needs of their particular citizens, balanced against the willingness of such citizens to provide the necessary taxes for the support of such services.

The contention of some in federal government is that cities are subject to federal regulation because they engage in interstate commerce, due to their purchase of supplies manufactured in other states. This reasoning is absurd, and if followed to its logical conclusion would place everyone in this country in interstate commerce. Every person reading this newspaper would be engaged in interstate commerce by the purchase of the paper,

because the paper on which it is printed was produced outside the State of Missouri.

Cities are not engaged in commerce, interstate or otherwise. Nor do we need federal regulation of municipal employment. Leave us to our own destiny, and let us continue our existing services.

Defendant's Exhibit No. 9

December 11, 1974

MEMORANDUM

TO: City Attorney
FROM: W. G. Lawley, City Manager
SUBJECT: IMPACT OF FLSA ON FRINGE BENEFIT COST

You recently inquired about the effect FLSA might have on the cost of employee fringe benefits should the city be required to comply. All those fringe benefits the cost of which varies in direct relationship to payroll dollars will increase proportionately as employee pay increases because of FLSA applications. Included in this category of benefits are social security, workmen's compensation insurance, retirement program, sick leave, vacation, and pay for holidays worked. On the average, fringe benefits cost the City now about 28% of payroll and in the case of departments having lower retirement ages, namely the fire and police departments, fringe benefits cost about 30 percent for the Police Department

and 35 percent for the Fire Department. If you need additional information on this subject please let me know.

I have included fringe cost in the summary of cost increases which might be expected under various alternatives available to the City should it be necessary to apply FLSA to our employees.

December 10, 1974

MEMORANDUM

TO: Thomas M. Utterback, City Attorney
FROM: W. G. Lawley, City Manager
SUBJECT: FLSA '74

The Fire Department is presently not in compliance with FLSA in that the Department's work week is not changed since the law first became effective, May 1; and the starting salary of $500 is $93.00 less than the starting salary per month computed at $1.90 per hour for a 72 hour duty week. After January 1, 1975, we will be out of compliance in a similar fashion in that the minimum rate of $2.00 per hour applied to the new 60 hour week – considering present circumstances wherein the Fire Department utilizes a 72 hour duty week, resulting in 16 on-duty personnel in addition to the Chief, the Inspector, and the Mechanic – will result in a minimum salary of $520, which is still $20 greater than the current starting rate of $500.

We have five major methods of complying with the FLSA:

1. Employ additional fire fighters, to maintain existing on-duty strength.

2. Retain the existing number of employees, reduce the duty week and make overtime payments to maintain on-duty strength.

3. Keep the same number of personnel but reduce duty week and reduce on-duty strength in lieu of making overtime payments.

4. Utilize an entirely or partially reserve (volunteer) unit.

5. Combine the police and fire departments to create a public safety department and cross-train policemen and firemen to perform both functions.

Of these, the first three have been reviewed in detail, the 4th has received only cursory attention, and the 5th, because of the nature of the change, would involve lengthy study.

Consideration of items 1 and 2 is based on the premise that FLSA requirements are that by 1977 a minimum duty week of 54 hours must be established and that in the following year the work week will be based on national averages. A recent survey indicates a national average duty week of 51 hours in cities polled by the International City Management Association. It appears reasonable to assume that – should all cities now using greater schedules reduce duty weeks to 54 hours by 1977 – the national average schedule would then drop to at least 48 hours per week.

To implement a 54 hour duty week and maintain existing strength levels would require 12 additional firefighters at an annual cost in 1977 of about $141,000.

To establish a 48 hour duty week would require a total of 19 additional employees from 1974 levels at an annual cost of $223,000.

To retain a 72 hour work week and pay overtime to maintain existing on duty strength would require annual overtime payments of about $340,000 by 1978. Should the average work week be reduced to 48 hours, the annual overtime payment would then be about $427,000.

The data given above for overtime payments and starting pay levels does not include the cost of compensating raises in departments other than the fire department so that all other employees would receive equal increases. The 72 hour duty week for firemen would result in approximately $306 per month average increase in fire salaries across the board to maintain parity. Extending a similar raise to non-fire departments would increase cost by an additional $964,000 annually.

Should staffing remain at 42 fire employees and on duty hours be reduced without expanding the number of men then the number of on duty personnel would decrease. A 54 hour duty week with 42 employees would result in a decrease from on duty strength of 15.4 to 11.6 after allowing 3 week's vacation and 1 week sick leave for all employees in the fire department. This reduction would allow the City to maintain 2 substations with 3 men on duty and 5.6 men, which translates to 5 or 6 men, on duty at the central station each day.

Should the duty week further reduce to 48 hours at a 42 staffing level, the on-duty strength would decrease from 15.4 to 10.3. This would result in operating 1 substation with 3 employees on duty and a central station with 7.3 employees on duty or would allow maintaining 2 substations with 2 men on duty at each plus maintaining the central station with 6.3 duty officers.

The City currently operates 3 substations with 3 men on duty at all times plus the central station with 6.4 men on duty. Because sick leave taken ordinarily averages less than 1 week per year per man, the City is ordinarily able to have at least 16 men on duty in addition to the Fire Chief, the Inspector and the Mechanic.

Cost data is not yet available for the 4th and 5th alternative courses of action; however, it is apparent that implementing either would result in a major change in local conditions as a result of legislation enacted by persons who are not experienced, not qualified, and otherwise without knowledge for making such decisions and as a result of regulations by agencies with similar expertise.

The Police Department would not be affected by implementation of FLSA standards with the possible exception of application of regulations to the police reserve unit. Promulgated regulations are unclear, but it seems likely that as now operated the reserve unit would not be affected until regulations are changed by FLSA Administrators; i.e., the Department of Labor.

The major impact of record-keeping requirements of FLSA, as I understand them, would be the necessity to change the method of reporting hours worked in the various departments and then centralizing detailed records of hours worked and paid. Presently much information is kept at department levels with only summary data reported to the central office for the purpose of computing payroll. The present system works to the benefit of employees to make sure they are properly paid within existing city payroll [page missing] clerical and other salary levels are conducted to insure that city salaries are competitive. In addition, it is the

City's policy to establish its lowest pay scale for the least demanding position at or near the federal minimum wage existing at the time salary scales are reviewed with the result that all city salaries are equal to or exceed federal minimum scales. In fact, when basic salary levels were last established, in 1970, base pay for the lowest paid position was scaled at $1.80 per hour compared to the then existing minimum wage of $1.60 per hour. All city employees other than college students, and similar temporary or part time employees are well above the federal minimum level of $1.90 to $2.30. An exception exists under recently promulgated rules, which require that the minimum wage be applied to sleep and meal time of firemen and not just to on-duty hours. This causes starting fireman pay to be less than $1.90 per hour. Presently, firemen and police employees earn salaries equivalent to and in most cases greater than those of teachers in the local public school system. When the value of fringe benefits is added, the pay scales of fire and police personnel are clearly superior.

ADDITIONAL INFORMATION:

Fringe benefits are:

1. a. Social Security Benefits
   b. Workman's Compensation Insurance
   c. Group Medical and hospital including major medical – Employee at City cost. Dependents at employee cost.
   d. Retirement plan
      - employee cost, 4% pay;
      - City picks up balance.
      - Benefits = 1% of high 5 year average salary per year of service + duty death, duty disability and other features. (On Retirement)

e. Sick leave
   – accumulative at 1 day per month up to 90 work days.
f. Vacation
   – accumulative at 1 – 1 1/2 days per month – 24 day maximum accumulative
g. 9 holidays.
h. Guaranteed annual wage policy, i.e., no layoff because of weather, etc.

2. FIRE RUN DATA

	No. Of Runs		Time On Fire Runs			Man-Hours On Fire Runs	
Year	Annual	Per Week	Annual	Min. Per Run	% of Avail. Hrs. Per Run**	Annual	Aver. Hrs. Per Man Per Year
73	389	7.5	318:09	44	3.6	1537:11	36.6
72	398	7.7	213:19	32	2.4	1286:57	36.8
71	451	8.7	NA*	–	–	1477:30	42.2
70	434	8.3	NA*	–	–	1368:20	39.1
69	336	6.5	202:18	36	2.3	NA*	–
68	353	6.8	171:13	29	2.0	NA*	–
67	307	5.9	160:05	31	1.8	NA*	–
66	344	6.6	186:27	33	2.1	NA*	–
65	295	5.7	169:46	35	1.9	NA*	–
64	390	7.5	227:30	35	2.6	NA*	–

*change in report
**25 hours/day x 365 days = 8,760 available hours.

3. Police overtime cost is expected to increase by about $8,000 per year because of pay at rate of 1 1/2 for hours over 40 per week, compared to previous practice of paying straight hourly rate for overtime hours worked.

Defendant's Exhibit No. 10

SALT LAKE CITY CORPORATION
LAW DEPARTMENT
101 CITY & COUNTY BUILDING
SALT LAKE CITY, UTAH 84111

October 23, 1974

Mr. Charles S. Rhyne
General Counsel
National Institute of Municipal
Law Officers
839-17th Street, N.W.
Washington, D.C. 20006

RE: Fair Labor Standards Act

Dear Mr. Rhyne:

Thank you for your inquiry dated October 15, 1974, concerning the adverse effects of the Fair Labor Standards Act on Salt Lake City government. Our personnel director, Lynn J. Marsh, has outlined in some detail the affect of this amendment on Salt Lake City operations. I have attached a copy of his evaluation for your records.

However, with specific reference to your inquiry concerning compensatory time off, I can state that the Federal requirements are met with great dismay by the City. As you are aware, Salt Lake City is located in the mountains at approximately 5000 feet elevation. In the winter months, commencing the latter part of October and often continuing through April, we receive copious amounts of snow. The snow must be plowed from our streets and salt applied to enable traffic to operate. In the past, the City has utilized street department employees to perform this service during the winter months; these employees often work long overtime hours and are on call 24 hours a day during this hazardous season. They have been given the option to accept compensatory time off on the basis of one and one-half hours off for each overtime hour worked or to receive time and one-half overtime pay. By far the vast majority of the workers have chosen to take compensatory time off during the summer months.

You will note from Mr. Marsh's correspondence, that it is estimated that the cost of overtime payments for the City would approach $500,000.00, a sum, I might add, the City does not presently have. Further, it is a procedure which is not desired by the majority of city employees; but is rammed down our throats by Federal fiat for reasons apparently known only to big labor and the Washington social planners.

You will also note the other areas of the Act which will have impact on the city. It would appear that the City will definitely be unable to hire the number of young people it has in the past years because of the increased salary which must be paid to these young people. We feel this high pay to be a strong detriment to

our community because: (a) we can see no need to pay the high salaries to our young people, which is entirely out of phase with what has been standard pay for teen age employment; and (b) it will substantially reduce the number of employment opportunities available to these young people. We fear they will be left idle with the potential of substantially increasing our juvenile delinquency and prank problems.

I trust the foregoing will be of some assistance to you in your case preparation. If I can be of any further aid, please advise.

Sincerely,

/s/ Roger
ROGER F. CUTLER
City Attorney

Defendant's Exhibit No. 11

SALT LAKE CITY CORPORATION
PERSONNEL DEPARTMENT
503 CITY & COUNTY BUILDING
SALT LAKE CITY, UTAH 84111

September 18, 1974

Mr. Allen E. Pritchard, Jr.
Executive Vice President
National League of Cities
1620 Eye Street, N.W.
Washington, D.C. 20006

SUBJECT: Fair Labor Standards Act

Dear Mr. Pritchard:

In response to your letter of August 22, 1974, the following information regarding the Fair Labor Standards Act Amendments, and the impact upon Salt Lake City, is submitted to assist the National League of Cities in their contemplated litigation.

Compensatory time off is probably the number one problem Salt Lake City has with the Fair Labor Standards Act Amendments at this time. However, new scheduling in both the Police and Fire Departments could also be a major problem under the new law. Prior to the adoption of the Amendments to this act, we permitted department heads the option of allowing compensatory time off in lieu of paying time and one-half overtime pay. Our employees appreciated this option, and the majority

took the time off. Last year in our Department of Streets and Public Improvements alone, employees accumulated 7,000 hours of overtime in snow removal. The majority of this time was utilized as compensatory time off.

This new law has forced us to amend our city ordinances. We have eliminated an ordinance which provided for overtime pay after eight hours per day or after 40 hours per week. The ordinance now provides for overtime premium pay only after 40 hours per week. This allows some flexibility in giving compensatory time off during the week, and in adjusting schedules. At the same time, we are giving at least 24-hours notice to the employee, whenever possible, when we must adjust his work schedule. The week following overtime worked, a cash payment must be made. Many employees are disgruntled with this new law because they can no longer trade shifts or build up comp time for use at a later date. It has created a serious morale problem, and I am sure has cost considerable loss in productivity.

Scheduling: We have established work weeks now throughout Salt Lake City, and have had to change many schedules for employees involved in 24-hour operations. Some of our old schedules were back to back, permitting employees longer periods of time off than what we can now permit under the new law.

Volunteers: School Crossing Guards were formerly paid $135.00 per month. Effective May 1, 1974 we increased their salary to $150.00 per month to meet the new minimum wage requirement of $1.90 per hour. They work approximately 2-1/2 to 3 hours per day during the months when school is in session.

Seasonal Peaks and Valleys: In our Department of Parks and Public Property, the minimum wage was raised from $1.25 per hour for summer students, to $1.90 per hour because the students rotate from one park to another cutting grass and trimming. No student exemption was allowed because of the rotation. Salt Lake City hires approximately 300 students during the summer months, which necessitated a sizeable increase in next year's budget. We did receive an exemption from both the minimum wage and overtime provisions for our cemetery, inasmuch as the Department of Labor classified it as a retail establishment with net earnings under $250,000.00 per year.

I mentioned previously our road maintenance and snow removal problems, and the serious impact this will have on Salt Lake City. After a careful review of our budget problems, and consideration of the impact of the Fair Labor Standards Act, we are cutting back 100 employees by attrition. Beginning October 1, 1974, we will not replace terminating employees unless the new hires receive special approval by the Personnel Director, City Auditor, and Board of City Commissioners.

Training: In the past, we have utilized interns from the University of Utah, and have paid them less than the minimum wage. The new law has eliminated this, and now we must pay them $1.90 per hour. The internship programs are beneficial to the students, inasmuch as they receive course credit, as well as to the City, which benefits from their education and enthusiasm.

Incentives: We do have an incentive system, wherein refuse collectors are assigned a particular route. When they complete the route, they can go home. We have not looked at all the implications with regards to overtime

with this particular group as yet, but a recent legal opinion issued by our City Attorney's Office indicates that we would have to pay them overtime when a holiday falls during the week, because our ordinances state that "All holidays shall be considered as days worked in the computation of overtime."

Compensatory Time: As I explained earlier, this is our biggest problem area. It appears at this point that additional overtime will be necessary to pay for former comp time, as it will be impossible to follow the Fair Labor Standards Act and not pay time and one-half premium pay. This will result in greatly increased overtime cost to the City. It would be impossible to give you an accurate figure at this time, but I estimate the cost to be near $500,000.00 per year. It will also result in a diminuation of service in several areas to pay the overtime, even at this rate.

Joint Employment: At present, this has not resulted in a serious problem. However, after January 1 when the overtime provisions apply to the Police and Fire Departments, we could have a serious problem, as many police personnel serve as special security officers at the Salt Lake City International Airport, at $5.00 per hour. When an officer works his regular shift, then puts in over 20 hours per week at the airport, we will be in an overtime situation. Each year the reduction in hours will create higher overtime payments. We had been considering a constant manning in the Fire Department effective July 1, 1974, but dropped the idea when the Fair Labor Standards Act was passed, until we can get a clarification of "Tour of Duty," "Sleep Time," "Meal Periods," etc.

Social Services: Under our Comprehensive Employment and Training Act (CETA), it was necessary to pay all the disadvantaged students $2.00 per hour in accordance with a Department of Labor directive, inasmuch as these programs were previously covered by the 1967 provisions of the Act. This created an inequity for those who are not disadvantaged. Someone could file a suit for "Equal Pay for Equal Work," and win the same pay.

Leave: Our ordinance allows only time worked in the event of a holiday, not sick leave, vacation, etc. This could create a problem on holidays, however, in the computation of wage-hour overtime.

Changing Pay from Annual or Monthly to Hourly: We are considering changing our pay periods to a bi-weekly schedule, effective January 1, 1975, in order to more closely relate the computer to work weeks. We are also giving consideration to changing operations and maintenance employees to an hourly salary for simplification of payroll reporting. However, this could create a serious morale problem with employees, and we want to study it very carefully before making a decision.

Police and Fire: Our main concern at this time is what effect the new guidelines will have on hours worked in the Police and Fire Service when the hours in the Fire Service are reduced below our present 56 hours per week, as in 1977 to 54 hours per week. This will start costing us more money, and if it ever hits 40 hours, it will cost an estimated $3,000,000.00 per year. Trading of shifts will be another problem.

We now pay an employee who must appear in court on his day off two hours for a misdemeanor and four hours for a felony. If this results in overtime pay, it will be

costly. Training time could also have a serious effect. Educational incentive pay, if figured into the base salary, could result in thousands of dollars each month.

Health Maintenance Programs: As I understand this, if we have a Health Maintenance Organization in operation in our area, we must give them first opportunity to bid on our health and accident insurance plan under the Fair Labor Standards Act requirements.

Age Discrimination: The protective group between the ages of 40 and 65 is creating serious problems in our Police and Fire Department requirements. Heretofore, they have limited these particular occupations to 21 through 29 years of age. The Civil Service Commission is presently reviewing these requirements for possible change, but it looks as if some serious modification will have to take place.

This law has created more morale problems for City employees than any law passed in the eight years in which I have been Personnel Director for Salt Lake City. The employees blame Salt Lake City for the law, and not the Federal Government.

If you need additional information, please do not hesitate to call on us.

Yours truly,

/s/ Lynn J. Marsh
LYNN J. MARSH
Personnel Director

Defendant's Exhibit No. 12

DEPARTMENT OF LAW
OFFICE OF THE
ATTORNEY GENERAL
STATE CAPITOL
PHOENIX, ARIZONA 85007

December 4, 1974

Mr. Bacigalupo
Rhyne & Rhyne
400 Hill Building
Washington, D.C. 20006

Dear Mr. Bacigalupo:

This is to confirm my telephone conversation with you of November 26 regarding the data which I gave you on the financial impact that the Fair Labor Standards Act is having on the State of Arizona.

Based on budget requests for the 1975-76 fiscal year, the State of Arizona will be required to spend an additional $2,000,000 for overtime salary payment which was not authorized under state budget restrictions prior to the 1974 FLSA amendments. In addition to this amount, employee related expenses are approximately $300,000. This amount does not include the additional amounts which are required to be spent for the extra half-time on highway construction overtime. Based on our 1974-75 expenditures through October, we project that the financial impact on additional highway construction overtime will be $250,000, including

employee related expenses. This brings our estimate of the impact of the FLSA on the State of Arizona to a total sum of $2,550,000 per year.

As I indicated to you, this does not include the impact which the amendments will have on the various counties and cities. I have requested that the League of Cities and Towns and Associated County Governments provide me with impact data for their member subdivisions. As soon as it is provided to me, I will transmit it to you.

If you have any further questions or I can be of any further assistance to you in this matter, please contact me.

Very truly yours,

N. WARNER LEE
The Attorney General

/s/ Peter C. Gulatto
PETER C. GULATTO
Assistant Attorney General

Defendant's Exhibit No. 13

November 25, 1974

MEMO TO: Rick J. Bacigalupo, Rhyne & Rhyne, 400 Hill Building, Washington, D. C. 20006

FROM: Battalion Chief Michael T. Mitchell, Commander, Planning Section, Los Angeles City Fire Department

SUBJECT: FAIR LABOR STANDARDS ACT LAW SUIT

Listed below are responses to questions set forth in Mr. Rhyne's letter to Mr. Carpenter, dated October 11, 1974.

1. Uniformed Fire and Police Personnel – 1974-75 Budget

Police – 7,389
Fire – 2,996

2. 1974-75 Budget – Estimated Salary Expenditures

Police – $133,396,833
Fire – $ 63,886,805

3. Estimated increase in cost for FLSA – *Fire* – Fiscal Year 1975-76

Estimated $2,590,454

plus an additional expense to the City for pension costs which would not appear on the Fire Department's Budget

Low estimate of $160,070 to a
high estimate of $432,624

depending upon the accounting system used to compile the figures.

The cost would increase over the years as maximum hours decrease pursuant to the FLSA.

Police Department

The Police Department estimates no immediate increase in salary accounts due to the FLSA. This is based on their proposal to use the difference in hours between 160 hours to 240 hours in a 28-day period (deployment) as compensatory time to offset overtime.

However, in 1978, if the Police Department is required to go to a 40-hour week or 160 hours in a 28-day period, estimated overtime costs would be somewhere between 4 to 6 million dollars annually.

4. Increased cost to the Fire Department would come about as a result of paying time and one half overtime for some overtime, and hiring 122 additional uniformed personnel for vacation and sick relief time to minimize the time and one half impact.

Police Department overtime estimate for 1978 would come about due to paying time and one half for hours worked over the 160 hours maximum.

5. The increased cost will not produce lesser service; but, on the other hand, it will not increase service, i.e., it will merely maintain the status quo.

Another possibility is that additional funds to meet these additional financial obligations might not be approved in future budgets due to a shortage of revenue or other allocations of available resources. Lack of sufficient funds to handle the overtime liability would then result in a reduction in manning in both the Fire and Police Departments, with a resulting reduction in service.

MICHAEL T. MITCHELL
Commander
Planning Section

Defendant's Exhibit No. 14

CITY OF SACRAMENTO

November 22, 1974

Mr. Charles S. Rhyne
Rhyne and Rhyne
Attorneys at Law
839 – 17th Street, N.W.
Washington, D. C. 20006

Dear Mr. Rhyne:

As requested by Mr. Richard Carpenter, General Counsel, League of California Cities, and as I discussed with Mr. Bacicalupo in Washington on November 18, this letter is to provide a statement of the impact of the Fair Labor Standards Act on the City of Sacramento Fire Department and Police Department.

The Fair Labor Standards Act was signed by President Nixon on April 8, 1974, with effective date of May 1, 1974, for all provisions of the Act except those relating to police and fire overtime under Section 7(k) and Section 13(b) (20) regarding police and fire departments. As a member of the National League of Cities' Task Force, I had the advantage of being familiar with the provisions of the Act which enabled my city, unlike most, to take some action prior to the effective date on May 1, 1974, which would mitigate certain problems caused by the new law.

On April 25, 1974, the Sacramento City Council passed City Ordinance No. 3395, Fourth Series (copy

enclosed), which contained several provisions necessary to anticipate the effective date of the Fair Labor Standards Act:

1. To raise the pay rates of three part-time classifications to comply with minimum wage provisions of the law;

2. To amend the definition of management employees to more closely fit the identification of professional, administrative and executive exemptions under Part 541 of the Code of Federal Regulations (29 CFR 541) by amending Section 2.98 of the Sacramento City Code;

3. To repeal Section 2.108 of the Sacramento City Code on overtime compensation which provided for the payment of overtime to employees at one and one-half times the applicable hourly rate or the allowance of time off at time and one-half for compensatory time. (A copy of the repealed Section 2.108 is enclosed.) The repeal of the City's Code section on overtime was deemed not to affect overtime provisions negotiated under a memorandum of understanding with a recognized employee organization.

The previous overtime policy of the City of Sacramento, as expressed in the repealed Section 2.108, permitted the granting of compensatory time off or time and one-half pay for any work performed in excess of the regular daily work shift or for any work performed on scheduled days off, except for sworn police officers and uniformed firefighters assigned to fire suppression. The City's overtime policy had been developed over the course of many years and was well liked by employees and City management alike. The sudden cut-off of the compensatory time usage for employees, other than police officers and firefighters, is estimated to have

resulted in additional costs in the current 1974-75 budget approximating at least $350,000. The City's prior policy of paying overtime on a daily basis is now more restrictive under the Fair Labor Standards Act requirement to compute overtime on a work-period (work week) basis. Where this had not been a hardship on the City when compensatory time off was available, the sudden imposition of overtime at time and one-half pay on a weekly and daily basis has been. It has required many significant changes in scheduling of hours in many City operations.

In the Sacramento Zoo, for example, the scheduling of hours previously had been on a nine-day cycle in which the employees would be scheduled to work six consecutive days and be off three. To avoid the unnecessary overtime payments imposed by the Fair Labor Standards Act, it has been necessary to adopt a work assignment schedule which is less desirable both to the employees and to the Zoo management, as follows:

OOXXXXX
XXOOXXX

Under the new schedule, the Zoo employee actually works seven consecutive days, but, as these include five days back-to-back with two days in the succeeding work week, this is permissible under the law. It is difficult to write about the effect and the impact of the Fair Labor Standards Act on the Police Department and the Fire Department operations as we still do not know at this late date what the federal regulations will be with regard to overtime. The Department of Labor, on November 1, 1974, issued a proposed new regulation, 29 CFR 553. It

is not known when the final regulation will be issued. The Department of Labor held hearings commencing November 18 and has held open the record until December 2, therefore, the earliest date at which time the final regulation will be issued will be December 3, 1974. As the effective date of the overtime provisions of the Fair Labor Standards Act under Section 7(k) will be January 1, 1975, cities, counties and other public agencies throughout the United States are placed, again, in the extremely difficult position of guessing as to what the law will be while being subject to the full penalties of the law.

At this time, the Sacramento Fire Department has 441 fire suppression personnel. The approximate annual salary expenditure for these 441 positions is $8,275,000. Sacramento fire suppression personnel are assigned to be on duty for 24-hour fire duty periods which commence at 8:00 a.m. and end at 8:00 a.m. the following day. During a tour of duty a Sacramento firefighter is scheduled to perform about six hours of work-related activities and to be on standby for the remaining 18 hours. Throughout the entire 24-hour tour of duty, a Sacramento fire suppression employee is on call to respond to any alarm.

The fire duty cycle of the Sacramento Fire Department at present consists of a 12-day cycle in which the employee is scheduled to be on duty four 24-hour periods in every 12 days and eight 24-hour periods off duty:

XOXOOXOXOOOO

X = 24-hour scheduled tour of duty.
O = 24 hours off duty.

A Sacramento firefighter assigned to fire suppression has a gross annual schedule of 3,049 hours. From the gross schedule hours are subtracted 129 hours for 11 holidays, leaving a net schedule to be performed of 2,920 hours of duty per year. Therefore, a Sacramento firefighter is scheduled to be on duty 121.67 twenty-four hour shifts per year on the average. With vacation and sick leave taken out, a Sacramento firefighter, on the average, is on duty 111 twenty-four hour periods per year.

At this time, the Sacramento Fire Department staffs to man, on a continuous basis, 147 positions at various fire houses located throughout the City. An enclosure detailing the numbers of positions which are manned on a continuous, fixed postmanning basis is enclosed.

We presently have a Memorandum of Understanding negotiated with Local 522, IAFF, which will expire June 30, 1975. We will be required to negotiate in the spring of 1975 with the firefighters regarding wages and hours and other terms and conditions of employment for the fiscal year 1975-76 and possibly for a longer term agreement. It will be necessary, in our negotiations with the firefighters, to negotiate conditions where we do not yet know what the law will be. For example, on January 1, 1978, a new regulation will come into effect through the determination of the Secretary of Labor which will identify that we will be required to pay overtime over 54 hours or less for firefighters. The number of hours over which overtime will be required is to be based upon a survey made in 1976 by the Department of Labor of fire hours in effect in 1975. The method of the survey to be conducted and the interpretation of the results by the Secretary of Labor are unknown at this time. It is entirely possible that the Secretary of Labor could

determine that the hours over which overtime must be paid firefighters commencing January 1, 1978, might be 48 hours. It is possible that we may wish to enter into a three-year agreement with the firefighters next spring. If we do, we must speculate as to what the new overtime regulations will be and act accordingly in determining our negotiating position.

At this time, for the Fire Department, we are attempting to determine the work period which the City of Sacramento will declare for "employees engaged in fire protection activities." Section 7(k) of the Act provides that we have the option of declaring a work period of from seven to 28 days. Section 7(k) requires payment of overtime at time and one-half for hours worked over 60 within the work period on a seven-day basis; over 240 hours for a 28-day work period; or any proportionate number of hours to days. Each of these alternatives presents significant difficulties.

We are also conscious of the fact that, starting January 1, 1976, the number of hours will decline to 58 per week over which overtime must be paid and to 54 per week commencing January 1, 1977. We know definitely that we will need to change the fire duty cycle and possibly the work period declaration commencing January 1, 1977. At that time, it would be necessary, in order to achieve a 54-hour duty schedule, to place firefighters assigned to fire suppression on a 28-day fire duty cycle in which nine 24-hour periods would be scheduled, which is a change from the existing twelve-day cycle. To do otherwise would result in unnecessary fire overtime costs.

In the remaining days of 1974, if the City of Sacramento declares a work period of 12 days or 24 days, in order to schedule the same number of fire duty hours

within each work period, the work periods will not coincide in any convenient manner with the pay period, presenting other kinds of administrative problems.

Looking ahead to January 1, 1977, if the City of Sacramento will continue to provide the same level of fire protection service as it now does, it will be necessary, in order to avoid unnecessary time and one-half overtime payment to firefighters, to reduce the average hours on duty per week from the present 58.6 gross/56 net to a net scheduled hours of 54 hours per week. This would result in additional costs of about $310,000 in fire protection, requiring the employment of an additional 16 or 17 firefighters, or the reduction in fire protection service of a like amount. As in all likelihood, salaries in 1977 will have increased, the $310,000 cost to move to a 54-hour average week is very conservative.

Commencing January 1, 1978, if the Secretary of Labor would require that overtime be paid firefighters at the rate of time and one-half over an average of 52 hours per week, the estimated cost would be $636,000; over an average of 50 hours per week, $993,000; and over an average of 48 hours per week, $1,379,000. Again, as all of the calculations are based upon present salary rates and present staffing patterns, these estimates are conservative.

Prior to May 1, 1974, civilian fire dispatcher clerks in the Fire Department were employed on a rotating schedule which changed every six days. The City of Sacramento gambled that the definition of "employees engaged in fire protection activities" would not include civilian dispatchers at the Fire Department and, therefore, would be required to be placed on a seven-day work week for purpose of computation of overtime and

be required to be paid time and one-half over 40 hours within the work week. This decision reached in late April 1974 required the very sudden reassignment of civilian dispatchers in the Fire Department from their long-established traditional work schedule to a new schedule designed to accommodate the seven-day work period. As in the case of the zoo attendants, neither the civilian fire dispatchers nor the Fire Department management feel that the changes required by the Fair Labor Standards Act in scheduline have enhanced Fire Department dispatching operations. Further, the loss of compensatoıy time off for overtime has complicated the scheduling of the civilian fire dispatchers.

With regard to the Police Department, the greatest impact that the Fair Labor Standards Act has had so far has been that compensatory time off no longer may be utilized. At this time, the Sacramento Police Department has a policy of paying time and one-half for police officers who work over 40 hours per week and time and one-half over a regular work shift, which, for most police officers, is eight hours. (A few City employees are assigned to a four-day, ten-hour work shift, in which case they are paid time and one-half over ten hours.)

It will be necessary to declare a work period pursuant to Section 7(k) for employees engaged in law enforcement activities within the Sacramento Police Department. This decision has not yet been made. Probably, the decision will be to declare a work period of 28 days in order to obtain the utility afforded by the four-week work period. One disadvantage of a 28-day work period for police employees will be the postponement of payment of overtime bi-weekly to payment of overtime every second pay period if this option is selected.

We now face the problem of determining for both the Police Department and the Fire Department which positions are subject to the Act and which positions under Part 541 are entitled to the administrative, professional or executive exemption. At the November 18, 1974, Department of Labor hearing on 29 CFR 553, in representing the National League of Cities and other public interest groups, I stated that the understanding which we had was that the proposed identification of titles in Section 553.3(a) and 553.4(a) were not intended to abrogate or modify the provisions of Part 541. Department of Labor panel members, in the question-and-answer period following my testimony, indicated that our interpretation is correct and that the regular tests for determination of administrative, professional and executive exemptions are not affected by the proposed language in 553.3(a) or 553.4(a). Therefore, we now can begin to attempt to identify which positions and which ranks are entitled to be excluded from the Act. This work has not yet been completed. We do not yet know whether our first-line supervisors of Fire Captain or Police Sergeant will be exempted or not exempted from the provisions of the Act. This determination will affect operations of the Police Department in particular and to a lesser degree the Fire Department.

The proposed Section 553.8 relating to joint employment, together with the provisions set forth in 29 CFR Part 791, present many problems for the Sacramento Police Department and also for the Fire Department. It has been the practice of the Sacramento Police Department to permit, under certain conditions, police officers to work for other public or private

employers to perform law enforcement duties. The previous and proposed requirements relating to joint employment have substantial impact on the outside employment procedures of both the Police and Fire Departments and will require substantial revision and curtailment of outside employment. It is particularly difficult in the Police Department and the Fire Department to make estimates of this kind when the change in overtime policy in the final year of 1978 cannot be known until, probably, September or October 1977.

It is almost certain that the Secretary of Labor, effective January 1, 1978, will require time and one-half over 40 hours for law enforcement personnel. It seems likely that the Secretary of Labor may require time and one-half over a number of hours fewer than 54 for firefighters.

With the many unknowns, it becomes necessary for the City of Sacramento to give serious consideration to substantial change in the form of fire suppression activities, including the abandonment of the long-standing 24-hour fire duty period (which includes eight hours of sleeping time and at least three hours of meal time) to be replaced by an eight-hour work day in which sleeping time would not be permitted and meal time would be substantially restricted.

The whole concept of the Fair Labor Standards Act is directed at paying covered employees on an hourly-rate basis. At this time, almost all City of Sacramento employees, including all police and fire employees, are paid on a bi-weekly basis.

The Act will force the conversion of all employees covered, within a relatively short period of time, from a

salaried bi-weekly basis to an hourly-rate basis. One effect this could have on fire suppression personnel who would work varying numbers of hours within a work period would be a variation in amounts of money per pay check.

I regret that it is not possible to be more definitive and specific concerning the total financial impact and effect on City services that this Act has caused will cause. I believe that, probably, it will take us another year to fully understand and appreciate all of the costs and problems that the mandate of the Fair Labor Standards Act has imposed.

Sincerely yours,

/s/ William F. Danielson
William F. Danielson
Director of Personnel

Enclosures:
City of Sacramento
Ordinance No. 3395, Fourth Series.
Sacramento Fire Department
Fire Suppression Staffing Assignment.
Repealed Section 2.108,
Overtime compensation.

Sacramento City Ordinance
No. 3395 – Fourth Series

ORDINANCE NO. 3395 FOURTH SERIES

An Ordinance Amending Division 2 of Article VI of Chapter 2 of the City Code
Relating To Rates of Salary and Hours of Work and Declaring Said Ordinance To Be An Emergency Measure To Take Effect May 1, 1974.

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Section 2.91 of Chapter 2 of the Sacramento City Code is amended by adjusting the salaries of cashier, locker attendant and public service aide to read as follows:

Code No.	Class Title	Pay Per Hour		
25110	Cashier	$2.08	$2.18	$2.29
25050	Locker Attendant	$2.03	$2.13	$2.24
25068	Public Service Aide		$2.01	$2.11

SECTION 2.

Section 2.98 of the Sacramento City Code is hereby amended to read as follows:

Sec. 2.98. Provisions Inapplicable To Management Employees.

The provisions of this division relating to hours and days of employment shall not apply to persons defined

as "management" by the City's Employer-Employee Relations Policy, it being the intention of the city council that such persons shall devote as much time to their employment as may be necessary for the efficient operation of the city government.

SECTION 3.

Section 2.108 of the Sacramento City Code is hereby repealed.

SECTION 4.

The repeal of Section 2.108 of the Sacramento City Code shall not affect amy memorandum of understanding previously adopted by the Council, nor the right of any employee covered by a memorandum of understanding to continue to receive overtime as previously provided for in Section 2.108 and the memorandum of understanding covering the employee.

SECTION 5.

Section 2.111-3 of the Sacramento City Code is hereby repealed.

SECTION 6.

This ordinance is hereby declared to be an emergency measure to become effective May 1, 1974, in order that the changes contained herein become effective concurrent with the effective date of the Fair Labor Standard Act Amendments of 1974.

SECTION 7.

This ordinance shall be published once within ten days after enactment in the official newspaper of the City of Sacramento.

PASSED: April 25, 1974
EFFECTIVE: May 1, 1974

MICHAEL S. SANDS
Vice Mayor

ATTEST:
HUBERT F. ROGERS
Chief Deputy City Clerk

SACRAMENTO FIRE DEPARTMENT
FIRE SUPPRESSION STAFFING ASSIGNMENTS

Average number of positions manned per 24-hour duty period, using 441 fire suppression personnel, who average 111 twenty-four periods on duty per year

First Battalion	Positions
Battalion Fire Chief	1
#1 Engine Company	5
#2 Engine Company	5
#2 Truck Company	6
#3 Engine Company	6
#5 Engine Company	6
#5 Truck Company	6

#11 Engine Company	4
#13 Engine Company	4
#13 Truck Company	5
#16 Engine Company	4
#16 Truck Company	5
	57

Second Battalion	Positions
Battalion Fire Chief	1
#4 Engine Company	5
#4 Truck Company	5
#6 Engine Company	4
#6 Truck Company	5
#7 Engine Company	5
#8 Engine Company	4
#9 Engine Company	4
#10 Engine Company	5
#10 Truck Company	5
#12 Engine Company	4
#21 Engine Company	5
	52

Third Battalion	Positions
Battalion Fire Chief	1
#14 Engine Company	6
#15 Engine Company	4
#17 Engine Company	4

#17 Truck Company	5
#18 Engine Company	4
#19 Engine Company	4
#20 Engine Company	5
#20 Truck Company	5
	38

Average total fire suppression positions manned 24 hours per day:

First Battalion	57
Second Battalion	52
Third Battalion	38
	147

November 1974

Holiday	*Date*
Independence Day	July 4, but if it falls on Sunday, then the following Monday is a holiday.
Labor Day	First Monday in September.
Admission Day	September 9, but if it falls on Sunday, then the following Monday is a holiday.
Columbus Day	Second Monday in October.
Veterans' Day	Fourth Monday in October.
Thanksgiving Day	Fourth Thursday in November.
Christmas Day	December 25, but if it falls on Sunday, then the following Monday is a holiday.
Statewide Election Days	
Good Friday (4 hours)	Friday before Easter Sunday.

The provisions of this section shall apply to employees paid on a monthly salary and such employees shall receive full compensation for holidays on which they are not required to work. Compensation for employees paid on hourly rates shall be only for actual time worked and while on earned vacation, earned sick leave, or disability in line of duty. (Ord. No. 2339 (4th Series), § 2; Ord. No. 3021 (4th Series); Ord. No. 3154 (4th Series), § 1.)

Sec. 2.108. Overtime compensation.[4]

It shall be the policy of the city that overtime work is to be discouraged. However, in case of emergency or whenever the public interest demands, an employee may be required to perform overtime work by the department head or his authorized representative.

It shall be the policy of the city to compensate employees required to perform overtime work either by (1) pay at one and one-half times the applicable hourly rate, or by (2) allowance of time off from employment with pay on the basis of one and one-half hours off for each hour of overtime worked. Overtime work shall be defined as:

a. Any work performed in excess of a regular daily work shift;
b. Any work performed on scheduled days off; or
c. Any work performed on recognized holidays as designated in section 2.107 of this Code, except by employees regularly assigned to other than a five-day work week and safety member employees of the police department.

In any department where employees may be allowed to make up time lost through inclement weather, irregular operational hours or other reasons, and time is made up by working on regular scheduled time off, such make-up time shall not be considered overtime, and shall be credited to the employee on a straight time basis.

[4]For charter provisions as to hours of duty, see Char., § 166.
As to maximum hours of work per week for firemen, see § 15.3 of this code.

When time off from employment is allowed as compensation for overtime, such time off shall be granted within one year from the date overtime was performed, and at the convenience of the department head. Upon separation from service, any employee having unused time off to his credit as compensation for overtime shall receive cash compensation for such unused time off.

The determination of additional pay or time off for overtime compensation shall be made by the department head, with the approval of the city manager.

Each department or division head shall submit to the city manager for his approval an outline of the overtime policies to be followed in his department or division to carry out the intent of these overtime provisions. Once approved, no changes shall be made in any department overtime policy without the consent of the city manager.

Accurate records of all overtime performed shall be kept by each department or division, and periodical reports as may be requested shall be submitted to the city manager relating to authorized overtime. (Ord. No. 2737 (4th Series), § 4; Ord. No. 3155 (4th Series), § 1.)

Sec. 2.109. Night shift premium pay.

All employees of the City of Sacramento, excepting those herein excluded, who work five-eights or more of their regular shift in the

Defendant's Exhibit No. 15

CITY OF PASADENA
ONE HUNDRED NORTH GARFIELD AVENUE
PASADENA, CALIFORNIA 91109

December 13, 1974

Mr. William Rhyne
Rhyne and Rhyne
400 Hill Building
Washington, D.C. 20006

Re: Fair Labor Standards Act Litigation

Dr. Mr. Rhyne:

Pursuant to our conversation of November 25, 1974, I am confirming the information as follows:

1. As of July 1, 1974, the City of Pasadena employed 144 fire suppression personnel.

2. For the calendar years 1975 and 1976, no increase in costs are estimated. For the calendar year 1977, increased costs are expected, however, they have not been estimated at this time. For the calendar year 1978, the increased costs for fire suppression personnel may amount to as much as $1,477,000 per year depending on several variables.

3. The estimated increased costs of fire suppression personnel results if fire suppression personnel are to receive the same pay for approximately 42 hours (as they presently receive for 56 hours) plus 14 hours of overtime at a rate of time and one-half.

4. Although increased costs are estimated, we do not know if the service will increase or decrease. It is possible that the Fire Department budget will not be increased and therefore there will be a lesser level of service.

It was a pleasure talking with you last month and I hope the information which I have communicated is helpful.

Justice Tobriner gave an excellent discussion of the right of cities to establish the level of service in *Firefighters Union v. City of Vallejo*, 12 Cal. 3d 608, 116 Cal. Rptr. 507 (1974). For your information, I am enclosing the report of Vallejo City Attorney John Powers on that decision and a memorandum of points and authorities which discusses that decision.

I would like to review a copy of your complaint and supporting memorandum of points in the action challenging the Fair Labor Standards Act. If it is convenient, would you please send our office copies of those pleadings.

Very truly yours,

Wendell R. Thompson
City Attorney

/s/ James O. Kahan
James O. Kahan
Deputy City Attorney

Defendant's Exhibit No. 16

AFFIDAVIT OF EDWARD E. McCOMBS, CITY MANAGER, CITY OF SAN BUENAVENTURA, CALIFORNIA, STATING THE EFFECT OF THE 1974 AMENDMENTS TO THE FAIR LABOR STANDARDS ACT ON SAID CITY

STATE OF CALIFORNIA)
ss.
COUNTY OF VENTURA)

EDWARD E. McCOMBS, being first duly sworn, deposes and states:

1. I am the City Manager of the City of San Buenaventura, California, and have held such office continuously since March 1970. Previously, over an eleven year period, I have held equivalent offices in two other California cities.

2. As City Manager of San Buenaventura, under the provisions of its Charter, I am the administrative head of the City's government being directly responsible to the City Council for the management of the City's affairs, including the appointment and discharge of personnel in the City's fire and police departments and the preparation of the annual budget. In carrying out these duties, I have direct knowledge of present and future financial, service, and personnel requirements of the City, including the requirements of the City's fire and police departments.

3. I have read and am familiar with the content of the Fair Labor Standards Act of 1938, as amended by the Fair Labor Standards Amendments of 1974, which extends the Act's minimum wage, overtime, equal pay

and recordkeeping requirements to public agencies. With regard to those provisions that affect the computation of, and compensation for, overtime work performed by employees engaged in fire protection and law enforcement activities, I feel that their implementation will result in a pronounced and adverse financial impact upon the City of San Buenaventura.

4. The brunt of the impact will be felt by the City's fire department where personnel are currently scheduled on a calendar year basis, and where individuals work an average of 62.3 hours per each seven day work period. City staff has estimated the increased costs that must be borne by our taxpayers if we are to simply maintain current levels of fire-related services *and* comply with the overtime provisions of the Fair Labor Standards Amendments of 1974.

Calendar Year	Work Week	Estimated Cost
1975	60 hours	$ 72,700
1976	58 hours	$ 63,200
1977	54 hours	$126,500
1978	54 hours or national average whichever less	$ 31,600 for each additional hour decreased

The current payroll for fire personnel affected by this enactment is approximately $902,000 annually. Increased costs associated with the Amendments would bring this total to nearly $1,164,400 by the end of 1977;

this represents a 29.1% increase in payroll costs without any corresponding increase in the level or quality of services delivered to our citizenry. It should also be noted that these estimated costs do not take into account increased salaries that will undoubtedly be granted to fire personnel during ensuing years; this will increase the heavy financial burden already imposed by the Amendments.

5. With the implementation of the Fair Labor Standards Amendments of 1974, the cost of providing public safety services to the citizens of the City of San Buenaventura will greatly increase. Service levels, at best, will remain the same provided that additional revenue is forthcoming to offset the increased costs; additional revenue, however, may not be available. Given statutory limitations upon our authority to increase the property tax rate, I am doubtful as to the City's ability to generate additional monies. This, then, would leave the City with two basic options. We could transfer the necessary funds from the operating budgets of other City departments, thus curtailing their activities correspondingly. On the other hand, we could reduce current manning levels in our public safety departments, thereby forcing our taxpayers to accept lesser levels of service for their same tax dollar. I am sure that both of these alternatives are entirely inconsistent with the intent of the Fair Labor Standards Amendments of 1974, and I urge the Court to enjoin its implementation so that associated cost impacts can be further explored.

Dated: November 21, 1974.

/s/ Edward E. Mc Combs
EDWARD E. MC COMBS
City Manager

Subscribed and sworn to before me this 21st day of November, 1974.

/s/ Gayle E. Osborn
Notary Public in and for said
County and State

Defendant's Exhibit No. 17

AFFIDAVIT

STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

RICHARD W. TURNLUND, being first duly sworn, deposes and says:

That he is the City Manager of the City of Newark:

that as a part of his duties he is responsible for preparation of the City's annual budget; that as part of his duties he is further charged with the operation of the City's police and fire departments;

that the City of Newark police and fire departments will be adversely affected by the implementation of the Fair Labor Standards Act of the United States as amended;

that compliance with said Act is so onerous that it makes it impossible for the City to provide the necessary police and fire protection which is required; that compliance with this Act will require neglect of other municipal functions to protect the health, safety and welfare of the citizens of Newark;

that he bases his determination with respect to the police department on the following facts as they exist in the City of Newark:

1. Police Cadets. Police Cadets are college students in police science who are given part-time "internship employment". To restrict it to college students, the City requires enrollment for a minimum of nine units college credit during the fiscal year. This averages three hours of class work and approximately five hours of homework per week for each individual. In addition, there is approximately three hours travel time from place of residence to the school. The City will have to pay for school time under the new legislation. The pay rate is $3 per hour. The calculation is as follows:

5 Cadets x 11 hours per week x 52 weeks = 2,860 hours per year x $3 per hour = $8,580.

2. Reserves. The Police Reserves are paid for contractual work in various security and traffic control activities for private enterprises. They are not paid for volunteer work in conjunction with normal police department activities. In addition, Reserves are paid a minimum of $24 per year to qualify them under California Workmen's Compensation Law. The 1973-1974 fiscal year City cost for paying the Reserves under the Fair Labor Standards Act provisions for time they volunteered without pay would have been $45,252. This is computed on the following basis:

Contractual hours paid to Reserves
2,821 hours x $4 an hour = $11,284
Volunteer hours not paid Reserves
11,313 hours x $4 an hour = $45,252

The number of hours contributed provides an index of the impact on police activities if this force is withdrawn.

3. Regular Officer Overtime. The elimination of compensatory time will increase overtime costs by $3,006.80 based on utilization during the 1973-74 fiscal year. There were 5,171 hours of paid overtime at a time-and-one-half rate during that fiscal year and there were 286 hours of compensatory time granted to police officers and police sergeants during that period of time. The regular hourly rate for a police officer is $7 and the overtime rate is $10.50. The regular hourly rate for sergeants is $8.13 and the overtime rate is $12.20. Police officers took 212 hours of compensatory time x $10.50 = $2,226. Sergeants took 64 hours compensatory time x $12.20 = $780.80, total $3,006.80.

4. Training Time. Police officers appear for a 15-minute briefing session prior to their normal 8-hour shift. The briefing time amounts to a total of 75 minutes for each 5-day workweek x 29 officers = 2,175 minutes. 2,175 minutes ÷ 60 = 36.25 hours x 52 weeks = 1,885 hours x $10.50 = $19,792.50;

5. Summary. The Fair Labor Standards Act of 1974 would have an increase financial impact of $76,631.30 on the Police Department;

that with respect to the fire department he bases his determination of the impact on the City of Newark on the following studies:

1. Firefighter Apprentice. This position is a 40-hour per week position. As scheduled, the only imapct for the next few years would be overtime pay in those instances where the person is working overtime as a result of an emergency call at the end of his period of work on a given day.

2. Regular Personnel. During the years 1975 and 1976, the current manning level and schedule of the Fire Department personnel is adequate to meet the mandated hours.

In order to meet the 54-hour per week (216 hours in 28 days) period mandated for January, 1977, the Fire Department has two alternatives:

a. Pay each individual approximately 2 hours of overtime at 1-1/2 times per week at a cost of $24,270.48 per year.

(1) Captain $8.78 an hour = $8,218.08

(2) Firefighter $7.35 an hour = $16,052.40

b. Hire one added person per shift to cover hours given shift personnel to bring in line with the mandated hours. Cost: $45,780 Salary and City costs.

(1) One person per shift = Three personnel at approximately $15,260. Total cost of $45,780 (based on 1974 figures).

In order to meet subsequent changes in hours, a rough approximation is one man per shift to cover each two-hour per week decrease. Assuming a final average schedule of 48 hours per week (approximately 185 hours in 27 day period), the City of Newark would need an added 12 men at an additional cost of $183,120. per year (based on 1974 figures).

3. Training Time – 1975. Most fire department training is performed on duty time in the stations. However, to attend those classes or seminars which are required or of importance to continuing operations at the current level of performance could cost approximately $8,833.32.

a. Arson Seminar, Training Officers Seminar, Mechanics Seminar.

Travel Time	10 hours each	=	30 hours
Class Time	40 hours each	=	120 hours
Study Time	15 hours each	=	45 hours
			195 hours @ $8.78
			= $1,712.10

b. Training on State or Federal Mandated Programs.

(1) 832 PC = 26 hours per person $6,067.62

(2) Monthly meetings = 130 hours at $8.78 per hour $1,053.60

4. Overtime – Manning, Staff Meetings, Call Back – 1975. The overtime necessary for the above conditions would remain approximately as budgeted in the 1974-75 Budget at $6,008.

5. Overtime – Shift Change – 1975. The overtime necessary in order to properly exchange information at shift change hour, and to cover field relief on calls at this period of time would be approximately $3,013.14.

a. Shift Change, Captains – 31 hours per year = $2,449.62

b. Field Relief – 24 hours per year, 1 company at $23.48 per hour = $563.52

6. Summary. The Fair Labor Standards Act of 1974 would have immediate impact on the fire department in the areas of outside training and overtime at shift change, costing approximately $11,846.46, in addition to the current $6,008 of overtime to cover manning, call back, and staff meetings.

The costs of overtime and new personnel to meet hour requirements would range from $24,270.48 in 1977 to approximately $183,120 in 1978;

that the statements herein contained are made upon departmental statistics and studies existing in the City of Newark and are made upon information and belief resulting from these studies;

that the implementation of the Act will cause a financial disaster for the City of Newark.

/s/ Richard W. Turnlund
RICHARD W. TURNLUND

Subscribed and sworn to before me this 22nd day of November, 1974.

/s/ Anthony J. Garcia
Notary Public in and for said
County and State

Defendant's Exhibit No. 18

CITY OF NEWARK
37101 NEWARK BLVD.
NEWARK, CALIFORNIA 94560

September 20, 1974

Allen E. Pritchard, Jr., Executive Vice President
National League of Cities
1620 Eye Street, N.W.
Washington, D.C. 20006

Dear Mr. Pritchard:

Don Benninghoven has requested that California cities submit instances of employment problems created by the Fair Labor Standards Act Amendments. The following is the impact to date on the City of Newark, population 31,000, San Francisco Bay Region.

Collective Bargaining Agreements

Prior to enactment of the Fair Labor Standards Act Amendments, Newark had negotiated "education in-

centive pay" for police employees. Such "education incentive pay" amounts to 5% of base salary for accomplishment of the equivalent of an AA Degree and 7½% of base salary for the accomplishment of the equivalent of a BA Degree. The problem stems from much of the work being non-college courses. The California Peace Officer Standards and Training Institute provides a number of vocational training courses for its equivalency certifications. These are still raising some serious questions as to the strict reading of the Fair Labor Standards Act.

The problem became more complex when firemen and non-peace officer employees requested education incentive pay for work-related training. This was denied on the basis of the Fair Labor Standards Act implications and resulted in nearly hanging up negotiations for this year. The firemen have promised to "battle to the end" on the issue next year when the so-called regulations have been clarified. Here there is even less strict college work involved.

The education incentive pay has also been used as a means of recognizing those who are willing to put in more than the normal effort into equipping themselves for their employment. It is totally uneconomic if pay for attendance and study time is required.

Training

The Fair Labor Standards Act provisions will serve to block the opportunity of city employees to effectively "share the cost" of certain specialized training which has a special individual interest. For instance, the Newark Fire Department has a man interested in specific areas of

arson investigation. These go way beyond Newark's routine need for arson work. The employee is willing to spend his time at a course, defray any expenses involved in transportation and housing if the city picks up the charge for the course. Employees have combined vacations, et cetera, with these kinds of training opportunities. This is no longer possible under the Fair Labor Standards Act.

The immediate return from much of this training is not directly to the City of Newark but to a particular vocational specialization. For instance, in the case of the fireman who was extremely interested in arson investigation, he may develop information or methods which may be valuable to the fire service as a whole because he considers this a very interesting avocation which just happens to be an offshoot of his regular employment. In private industry the man may realize some financial gain from these efforts. This is not nearly as likely in the public service.

Volunteers

The City has maintained a large reserve police force for a number of years. The force was increased from some 26 to 51 in 1972 under a LEAA grant. The intent of the increase was to permit interested citizens to donate time to specific police activities including investigation, communication, community information, and records system in addition to the usual patrol and traffic duties. We have withheld replacing any personnel during the last six months because of the unknown impact of the Fair Labor Standards Act. This has cut down the police department capability substantially since these part-time

people were contributing a good deal to the police effort as well as becoming acquainted with what the police department does.

The problem with the Fair Labor Standards Act is that police reserves are paid for some work and donate other time. The city has tried to control the police function, thus has required any private agency desiring special police help to pay money to the city which is reimbursed to the reserve officers working on that detail.

The cost of paying the police reserve unit for all time expended for the City at even the minimum wage would be so prohibitive that the reserve operation would have to be substantially curtailed. This will result in lengthened investigation periods, a serious drain on traffic control capabilities, diversion of regular police to traffic control and many other routine duties resulting in jobs not being done or service time being substantially protracted.

A further byproduct is the elimination of the opportunity for a lot of people to "try out" police work. This gives them a better comprehension of what the police department activity is and its part in the entire municipal operation. This information is valuable in merely exercising good citizenship. It further has strengthened the community-police ties.

Part-time Personnel

The Fair Labor Standards Act has severely hampered recreation department programs in hiring part-time employees. Several practices undertaken for both economic and social reasons have been withdrawn.

Many of the part-time recreation leader personnel are students attending local community colleges. These

students would like to maintain as flexible a work program as possible. This means that one week they may be available 20 hours whereas the next week they could be available 60 hours. Since the students are interested in earning money and it was much easier to permit this type of operation where overtime was not a factor, such employment was encouraged. With the advent of the Fair Labor Standards Act, the work time beyond 40 hours per week has been cut off. This meant a substantial initial jumble in scheduling and inability to provide incomes to students formerly available.

The Recreation Department had also set up a work program for young people to assist in meeting social problems in the community. This work program involves park maintenance, set up of chairs in community centers, and a variety of other tasks. The limitation of the Fair Labor Standards Act on child labor eliminated any potential for taking this program down to the 10-year old age bracket (our worst vandalism age) and curtailed the utilization of these people in the 14 to 19-year old category.

Many of the younger children were having work prepared for them which enabled them to take various recreation department excursions, et cetera, rather than receiving money. This, of course, is no longer possible under the Fair Labor Standards Act. It is not economic for the City to employ these young people at minimum wage.

Compensation Time

One of the biggest employee gripes resulting from the Fair Labor Standards Act is the elimination of

compensation time. Compensation time permitted employees to build up a bank of time to be used for personal business without any ups and downs in their paycheck. Although the present system compensates them for overtime, there is no assurance that the money will be saved to offset the necessity to take off two hours for personal business a month later. Employees much prefer the opportunity to hold a stable monthly rate and vary hours as needed.

Hopefully, this is helpful to your preparation of the litigation.

Yours truly,

/s/ Richard W. Turnlund
RICHARD W. TURNLUND
City Manager

Defendant's Exhibit No. 19

CITY OF MONTEBELLO
1600 BEVERLY BOULEVARD
MONTEBELLO, CALIF. 90640
(213) 722-4100 • 685-7170

November 22, 1974

Mr. Charles Rhyne
Rhyne & Rhyne
400 Hill Building
Washington, D.C. 20006

Dear Mr. Rhyne:

Pursuant to requests from the National League of Cities, this letter will attempt to specify some of the dollar impact of the Fair Labor Standards Act Amendments of 1974 on the City of Montebello.

Most of the additional costs to the City of Montebello, as a result of the FLSA, are difficult to estimate with any accuracy at this point in time. This is especially true of costs within the police department and the costs which relate to time and one-half provisions for general employees. In addition, it is almost impossible to accurately estimate the future costs caused by the elimination of compensatory time as a method of compensating employees.

Increased costs for providing fire suppression services, however, are not as difficult to estimate. This is due to the well defined manning requirements and the strict

scheduling which must be followed in providing fire suppression services. I have attached the estimates for the City of Montebello in this regard; these estimates are based on the time and one-half overtime pay requirements of the FLSA, and the following data regarding the existing wage and hour conditions as of the date the Fair Labor Standards Act Amendments of 1974 was signed into law.

1. Fire service employees were scheduled on a 58 hour per week work schedule.

2. A total of 54 employees were involved in providing fire suppression services.

3. Annual salaries (top step) for fire suppression employees were as follows:

a. Battalion Chief	$20,580
b. Captain	$16,920
c. Engineer	$14,832
d. Dispatcher	$ 9,127

4. 1973-74 total overtime budget – $50,000

5. 1973-74 total fire suppression budget for salaries, wages and fringe benefits – $985,031.

I hope this information is of some assistance to you in your preparation of the lawsuit challenging the constitutionality of the extension of the FLSA to State and local Government. If I can be of any further assistance, please do not hesitate to contact me.

Very truly yours,

/s/ Roy R. Pederson
Roy R. Pederson
City Administrator

CITY OF MONTEBELLO
INCREASED COSTS FOR PROVIDING FIRE SUPPRESSION SERVICES TO MONTEBELLO RESIDENTS AS RESULT OF FLSA AMENDMENTS OF 1974*

January 1, 1975	
Increase In Overtime Costs	$10,725
% Increase In Overtime Costs	21.5%
% Increase In Total Salary Costs	1.1%
January 1, 1976	
Additional Increase In Overtime Costs	$2,962
% Additional Increase In Overtime Costs	5.9%
%Additional Increase In Total Salary Costs	.3%
January 1, 1977	
Increase In Regular Salary Cost (6 additional fire fighters)	$104,235
% Additional Increase In Total Salary Costs	10.6%
% Increase In Number of Fire Employees	11.1%
Summary	
Increase In Overtime Costs	$13,687
Increase in Regular Salary Costs	104,235
Increase In Total Salary Costs	$117,922
% Increase In Overtime Costs – 27.3%	
% Increase In Total Salary Costs – 12%	

*All figures are stated in terms of estimated annual costs

I, ROBERT J. FRANZ, Assistant to the City Administrator, City of Montebello, California hereby swear under penalty of perjury that the cost estimates included in the letter (with attachments) attached hereto, are true and correct estimates based on all available factual data. I hereby further certify that all factual data included in the letter (with attachments) attached hereto is true and correct.

/s/ Robert J. Franz
Robert J. Franz

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

Subscribed and sworn to before me this 22nd day of November, 1974.

/s/ Helen F. Liggett
Notary Public in and for the State
of California, County of Los Angeles

Defendant's Exhibit No. 20

CITY OF MONTEBELLO
1600 BEVERLY BOULEVARD
MONTEBELLO, CALIF. 90640

October 3, 1974

Mr. Allen E. Pritchard
Executive Vice President
National League of Cities
1620 Eye Street N.W.
Washington, D.C. 20006

Dear Mr. Pritchard:

In response to a request from Don Benninghoven of the League of California Cities, this letter will attempt to illustrate the impact of the Fair Labor Standards Act on the City of Montebello. It is my understanding that this information is to be used in conjunction with the proposed law suit challenging the constitutionality of the extension of the FLSA to State and local government.

I will attempt to follow the general outline of the questionnaire prepared by the League of California Cities in describing the impact of the various provisions of the FLSA.

VOLUNTEERS – The extension of the FLSA to the City of Montebello has had significant impact on the ability of the City to utilize volunteers in a manner most beneficial to the public being served. The impact on two City departments, Police and Parks & Recreation, has been particularly significant:

POLICE

1. Prior to the application of the FLSA, the City utilized "reserve" officers (numbering approximately 40) for various police department functions such as special event coordination, fingerprint officer, and booking officer. These officers also ride in patrol cars as the "second man" in the patrol car.

Reserve officers are paid $25 a month as compensation for their contribution to the City. There is a wide variance in the number of hours worked per month by reserve officers depending on current activities and the individual officer's desires. It is not unusual for a reserve officer to work as many as 40-50 hours per month, although the average would be approximately 20 hours per month. Reserve officers, obviously, are not performing the various functions described above because of the amount of compensation offered by the City. They are volunteering their time as a public service to the City and enhancing their knowledge of police activities. The City has generally considered $25 per month compensation as a recognition of the fact that a reserve officer must furnish his uniform and equipment at his own expense. It has never been considered compensation for hours worked since these individuals are volunteers.

2. Due to the application of the FLSA to the City of Montebello, the number of hours worked per month by reserve officers is now limited to $25 divided by the minimum wage or approximately 12-1/2 hours per month. Detailed timecards must also be maintained which were not previously necessary for the officers.

3. Sections 776.5 and 785.6 of the Act of Federal Interpretative Bulletins requires this change in the practice of compensating reserve officers.

PARKS & RECREATION

1. Prior to the application of the FLSA, the City hired recreation aides for the summer months to help with the City's various recreation programs. Many of the individuals hired for these purposes are more interested in helping out with the recreation program (as a public service) than with the compensation received for their work. Consistent with this, many of the individuals work more than the number of hours per week (or year) that they are compensated for. The number of hours per week (or year) these individuals can be paid is based on an annual review of the various recreation programs during the budgetary process. At that time, it is determined what level of services can be funded from the taxpayers' funds, and the amount of money budgeted is based on the determination. The individuals hired may be willing to provide a higher level of service than budgeted out of taxpayers' funds, and, therefore, volunteer their time over and above the number of hours they are compensated for.

2. Due to the application of the FLSA to the City of Montebello, the number of hours worked per week (or year) by recreation aides is limited to the amount of hours budgeted during the annual budget process. Individuals are not allowed to volunteer their time to assist in recreation programs over and above their compensated hours.

3. Section 785.11 of the Act of Federal Interpretative Bulletins requires this change in the practice of utilizing recreation aides.

TRAINING – As a part of the agreement with the Montebello Police Association during the past year's meet

and confer process, the City implemented an educational/merit incentive program for the police department. The program had to be modified prior to adoption (by deleting a portion of the program) because of certain FLSA requirements:

1. Prior to the application of the FLSA, the City could have required that a police department employee complete a certain number of units of education per year in order to maintain eligibility for the proposed educational/merit incentive pay. This requirement is considered important to the City management since additional pay for the completion of a certain level of education does not provide "incentive" for education once the level is obtained. The City feels that a workable program for additional pay for education should include a maintenance provision to insure that the individual continues to earn his additional pay.

2. Due to application of the FLSA to the City of Montebello, the requirement to complete a minimum number of units per year was deleted from the educational/merit program. This is due to the fact that provisions of the FLSA require that the City compensate the employee for the hours spent in a classroom as well as study time for all class work. This would significantly increase the cost of the educational/merit program, and would require an additional administrative procedure to monitor and verify hours spent by employees in the classroom and studying. This additional requirement is not within the intent of the educational/merit incentive program which was agreed to during the meet and confer process.

3. Section 785.28 of the Act of Federal Interpretative Bulletins prevents the inclusion of such an educational maintenance requirement unless compensated as described above.

COMPENSATORY TIME

1. Prior to the application of the FLSA, the City granted compensatory time as a method of paying employees for overtime hours worked. Paid overtime was also utilized when authorized by a specific budget appropriation.

2. Due to the application of the FLSA to the City of Montebello, compensatory time is no longer authorized and all overtime situations now must be anticipated in advance during budgetary review.

3. One effect of this provision of the FLSA, is to reduce the City's ability to respond to emergency situations in those departments or activities in which no overtime was budgeted during the annual budget process. The estimated additional cost to pay overtime, rather than grant compensatory time, for fiscal year 1974-75 is (approximately 1% of the City's property tax revenue) $15,000.

EXEMPT/NONEXEMPT CLASSIFICATIONS

1. Prior to the application of the FLSA, the City had adopted by a resolution of the City Council designations of management and non-management employees.

2. Due to the application of the FLSA to the City of Montebello, all job classifications within the City must be reviewed to determine whether the position is exempt or nonexempt under the FLSA. Since the exempt/nonexempt designations do not coincide with the City's management/nonmanagement designations, two separate systems of designation must be maintained on a continual basis.

RECORDKEEPING

1. Prior to the application of the FLSA, the City's recordkeeping requirements were limited to those required for State, Federal, and retirement reporting purposes, and for internal recordkeeping requirements.

2. Due to the application of the FLSA to the City of Montebello, additional records must be maintained which the City has no use for except to comply with the recordkeeping requirements of the FLSA. Examples of such records are:

Total daily or weekly straight-time earnings; and

Total overtime pay for the workweek.

The City of Montebello did not maintain the records prior to the application of the FLSA since the City pays its employees on a biweekly basis and has no need for the above weekly information.

TIME AND A HALF OVERTIME PAYMENT

1. Prior to the application of the FLSA, the City of Montebello granted either compensatory time or straight-time pay for overtime hours worked.

2. Due to the application of the FLSA to the City of Montebello, time and a half payment is required for all overtime worked by City employees (excluding safety, transit and exempt employees).

3. The total cost impact of the time and one-half pay requirement will not be known until guidelines are issued by the Department of Labor regarding overtime pay for safety employees. Current estimates are that the ultimate cost increase could be as high as $140,000 a year at current pay rates. This is approximately 2.5% of the City's total cost for salary and fringe benefits, and would

require a property tax increase of approximately 7% to fund from that revenue source.

I hope that the information provided above will be of some assistance to the NLC in its preparation of the proposed law suit. As most of the cited examples indicate, the City of Montebello has developed, over the years, a personnel and administrative system which is cognizant of: employee needs, taxpayer concerns, public service concepts, ability to pay, and sound personnel practices. The application of the Fair Labor Standards Act to the City has disrupted the system by mandating rules and regulations which do not recognize all of the above considerations.

Please do not hesitate to contact me if you feel I can be of further assistance.

Very truly yours,

/s/ Roy R. Pederson
Roy R. Pederson
City Administrator

Defendant's Exhibit No. 21

CITY OF MENLO PARK
CIVIC CENTER
MENLO PARK, CALIFORNIA 94025

October 4, 1974

National League of Cities
1620 "I" Street, N.W.
Washington, D.C. 20036

Gentlemen:

The purpose of this letter is in response to a questionnaire sent to us from the League of California Cities concerning the Fair Labor Standards Act and how it has effected our municipality. At this point in time the impact has been signifigant; however, many issues remain unresolved and therefore the impact to date very well may not represent total impact of change forced on our municipality by this act.

Menlo Park has historically paid twice a month. We have had to shift over to paying on a bi-weekly basis. To do this has required the use of four man nonths to change individual payroll records on each of our 150 full-time employees and our part-time employees as well. As of September 1, we began paying on a bi-weekly basis. Some organizational trauma has occurred because some mistakes were made in this conversion, and some people were not paid properly. These transition difficulties with the employees are of a minor nature however.

We have learned that some cities are not converting over from paying twice a month to a system of paying

every two weeks. These cities have chosen instead to keep separate records: One set for their payroll system and one set to meet the hourly record requirements of the Fair Labor Standards Act. We consider this obviously to be an inefficient way of doing things however we recognize that some cities might not be in the position where they can afford to reallocate resources on an instantaneous basis to restructure their whole payroll system as we have felt forced to do. Perhaps the largest single area of difficulty that has grown up as a result of the passage of the Fair Labor Standards Act has been the disallowing of compensatory time off. We had a system where we gave the employee an option of either comp time or cash time-and-a-half money overtime. This option has been taken away from the employee and many feel that we, the management of the City, have inflicted an unnecessary and unfair restriction on their behavior patterns. We had a good system in the eyes of employer and employee and the Fair Labor Standards Act has destroyed that system. Another area that Fair Labor Standards Act is impacting is in our Police Department. The exact nature of the impact is difficult to determine at this point because the rules are not clear for safety officers. Historically, we have operated in the Police Department with a regular force of about 45 and a reserve force of about 30. The reserves have been paid when filling in on shifts for regular officers. Reserves have also been used for things where regular officers would not normally be used. For these activities the reserve officers have not been paid. The City has benefited by the expansion of service, and the reservist has benefited be receiving police training. The City's affirmative action program has been assisted immeasurably by being able to

use the reserves as an entry vehicle into the regular department for minority candidates. The Fair Labor Standards Act basically says you're either a worker on the payroll or you're a volunteer. We are having a problem with that and we are having difficulty with determining whether or not our reserves are safety officers or miscellaneous employees and therefore don't know whether the rules went into effect May 1 or go into effect January 1.

With our regular officers we have yet to determine the total impact on work schedules and what new additional payroll changes we will have to be making for them. It is our opinion that with regard to the City of Menlo Park the Fair Labor Standards Act has cost the taxpayers money, has potential to reduce the quality of service and create organizational disharmony between employer and employee. That in summation is our opinion of the impact of this act.

Very truly yours,

/s/ Richard B. Kerwin
Richard B. Kerwin
Assistant City Manager

Defendant's Exhibit No. 22

CITY OF MENLO PARK
CIVIC CENTER
MENLO PARK, CALIFORNIA 94025

November 21, 1974

Mr. Charles Rhyne
Rhyne & Rhyne
400 Hill Building
Washington, D.C.

Dear Mr. Rhyne:

I have been asked by the League of California Cities to submit information to you concerning the anticipated effects of the Fair Labor Standards Act on our police department operations in terms of increased costs and/or diminished services to the public. While the total impact is difficult to determine as yet, we do know that substantial organizational changes will occur which will end our Reserve program and will produce less service for greater costs.

Specific dimunitions of service will be in the areas of crime prevention, traffic enforcement, case investigation and follow up, non-emergency and emergency indident response and both service and crime related calls.

We estimate that to prevent this reduction of service will require the employment of six additional officers to be added to the 38 sworn personnel already working. The costs of doing this will be approximately $120,000 annually – and we can't afford it!

Very truly yours,

/s/ Richard B. Kerwin
Richard B. Kervin
Assistant City Manager

Defendant's Exhibit No. 23

CITY OF INGLEWOOD CALIFORNIA
CIVIC CENTER
ONE MANCHESTER BOULEVARD
INGLEWOOD, CALIFORNIA 90301

October 4, 1974

Mr. Allen E. Pritchard, Jr.
Executive Vice President
National League of Cities
1620 Eye Street, N.W.
Washington, D.C. 20006

Dear Mr. Pritchard:

With the inclusion of local governments in the Fair Labor Standards Act Amendments in May of this year came all of the problems that one might expect in this City and all of the other surrounding cities. Disruption and chaos are inherent in any Federal or State regulations that require uniform application to all cities with no consideration of the variety of personnel practices, policies and procedures that exist within the individual cities.

The city of Inglewood hastily moved to comply with the law on May 1, 1974. The basic problems to be solved at that time were to 1) determine exempt and non-exempt personnel; 2) establish an acceptable record-keeping system and; 3) abolish items contained in collective bargaining agreements that were in conflict with the FLSA.

One of the items contained in the agreement between management and the employee associations in this City was a policy of granting either overtime pay or compensatory time off at 1½ times the regular rate of pay for all hours worked in excess of forty hours. It is significant to note that initial examination of past employee pay records show that the majority of the employees actually utilized the compensatory time off as opposed to overtime pay. Since FLSA disallows this practice, the compensatory time off has been abolished. Yet employees still request compensatory time off but must be refused since the enactment of the amendments.

Emergency services of one type or another always appear during the year. Management has utilized "comp time off" extensively to pay for these unanticipated occasions. Even though "comp time" has stopped, emergencies have not. Funds provided for these services will have to be shifted from predesignated areas.

FLSA requires jurisdictions to maintain accurate records showing hours worked and wages paid. The ideal way of maintaining this type of information would be to provide a single printout. However, Inglewood has a payroll system that was computerized in the 1950's. The system is an exception payroll system which means that checks are automatically issued for all employees at the applicable 40-hour rate without the submission of time cards. Time cards are entered only for exceptions, i.e., overtime, sick leave, vacation. Therefore, the computer printout only shows actual dollars paid to an employee and not the hours worked. In order to comply with the law it became necessary to design a system of log sheets for all employees showing actual hours worked in addition to the computer printout showing wages paid. In

some of the larger departments this required an additional employee to manually prepare and maintain the necessary records. The current payroll system has been revised many times and has reached the point where programs can no longer be revised or added.

FLSA requires that hours of off-the-job training required by an employer are considered hours worked and must be paid at the minimum wage. The Police Department, in an attempt to achieve affirmative action goals, has been providing employment opportunities to 15 young men and women interested in a career in law enforcement. Trainees work 20 hours per week and attend school 20 hours per week. These employees were paid $3.57 per hour for the 20 hours worked. The City provided funds for tuition and books. However, the twenty hours of school were not considered hours worked and were not paid. One possible solution to the problem was to provide $2.00 per hours for 40 hours. However, that was not possible since the City was bound by agreement to pay a minimum $3.57 per hour. The other solution was to provide $3.57 hourly for all 40 hours. The City could not afford this expense. The end result was to abolish the 20 hours of school, thereby relieving all signs of impetus from the program.

A few of the employees in the Police Department who, in addition to their regular 40-hour positions with the City, also worked part-time as matrons in the jail. The FLSA requirement of paying the part-time hours at 1½ times resulted in the employees loss of part-time opportunities for those employees.

The limitations on determining exempt status through the three categories (administration, executive and professional) were not broad enough. Consideration was

not given to the employee who earns the high salary levels and performs specialized duties that do not fit the three defined categories. Often these employees perform vital services that are not always limited to a 40-hour week. Overtime pay is extremely high for these employees.

These are just a few of the problems and solutions experienced in this City. The proposed regulations for safety will increase the burden of government.

I heartily endorse the actions of the League in its pursuit of justice for local governments. If you require any additional information please contact me.

Yours truly,

/s/ D.W. Ayres
Douglas W. Ayres
City Administrator

Defendant's Exhibit No. 24

CITY OF CLOVIS
CITY HALL, 533 POLLASKY AVE.
CLOVIS, CALIF. 93612

October 9, 1974

Mr. Allen B. Pritchard, Jr.
National League of Cities
1620 Eye Street, N.W.
Washington, D.C. 20006

Dear Mr. Pritchard:

The following information is provided in response to the request by Don Benninghoven of the League of California Cities.

The application of the Fair Labor Standards Act to local government has had the following effects on the City of Clovis:

1.. Compensatory Time

It has eliminated the use of compensatory time off, necessitating additional overtime cost to the City. Employees have been affected in an equally unpleasant manner in that they have previously been able to miss work for doctors appointments, to care for sick children, etc., by using compensatory time. This type of leave must now be taken as "leave without pay". Compensatory time has also been valuable to employees who must work holidays, in that they have been able to schedule their own holidays through use of compensatory time. While it is still possible to allow an employee time off in the same

work week, it is difficult for an employee to accumulate a whole day of credit in one week and impossible to schedule anything in advance.

2. Overtime

The City pays for hours in excess of eight (8) in one day, at the overtime rate. The Fair Labor Standards Act has not required this, but the city is bound to it by a long-standing local agreement. Therefore, scheduling a long day for an employee one day to allow time off on the next is too expensive to be reasonable.

3. Training

Employees required to attend training schools have been placed in a position by the Fair Labor Standards Act that if "homework" is required, overtime must often be paid. The same applies to travel time. While attendance at these schools has generally been sought by employees who see the value to careers and, in the case of Fire and Police personnel, is necessary for the safe conduct of their job, the City may have to cut back on the number of employees able to attend in the future for financial reasons. While clarification is not yet available, the City's educational incentive program for Fire and Police personnel, which "encourages" the continuation of their education, may become too costly if the City is required to compensate their class and study time at the overtime rate.

4. Volunteers

Volunteer and reserve employees have been able to gain work experience through completion of a set number of training hours per month in addition to hours of paid employment. The Fair Labor Standards Act will require that these employees either be paid for all hours, or be denied the opportunity to receive any payment at all.

5. Student Interns

The City has been actively involved in internship programs with California State University, Fresno, to give students the opportunity to observe and participate, to a limited extent, in the daily governmental operations. Students have often been compensated for their work through school credit and a small stipend. The Fair Labor Standards Act will cause the City to either eliminate the program or the pay, excluding at least some students either way.

6. Meetings

The City would like to be able to encourage participation to subprofessional personnel at evening meetings if they are interested. With the Fair Labor Standards Act, the City would be required to pay overtime for their participation and must be careful to avoid even encouraging their interests.

7. Employee Incentive

Cities have previously been able to provide some flexibility to employees to work scheduling and through the use of compensatory time. The Fair Labor Standards Act has removed the flexibility, making work hours "hard and fast". Adding to this the loss of training opportunities and the chance to "work one's way up" through participation at meetings and working after hours, the Fair Labor Standards Act threatens to stifle employee incentive in the non-exempt classes.

It is my hope that this information will be of some assistance to you. Your efforts are greatly appreciated.

Very truly yours,

/s/ Allen L. Goodman
ALLEN L. GOODMAN
City Manager

Defendant's Exhibit No. 25

CITY OF CORONADO
1825 STRAND WAY
CORONADO, CA. 92118

October 4, 1974

Mr. Allen E. Pritchard, Jr.
Executive Vice President
National League of Cities
1620 Eye Street, N.W.
Washington, D.C. 20006

Dear Mr. Pritchard:

Per your request, the following consists of the impact that the Fair Labor Standards Act has on the City of Coronado in terms of costs and services:

1. Collective Bargaining Agreements: The City has negotiated Memorandums of Understanding and also has a provision in its Civil Service Rules a benefit where an employee can take compensating time off as a method of payment for overtime worked. In many instances, employees desire to accumulate this time over a period of months and take off the time at the mutual convenience of the City and of the employee. Due to the passage of the Fair Labor Standards Act, the City was required to amend its Civil Service Rules to basically eliminate compensating time off unless it was given in the same payroll period in which it was earned.

2. Scheduling: Some minor changes will be required in the City's Fire Department as a result of the Fair Labor

Standards Act for scheduling purposes. The City will probably be required to restructure the working schedules to provide for 28-day work periods for volunteers. In that the City of Coronado does not pay its volunteer workers a stipend, the Fair Labor Standards Act does not pose a problem to the City of Coronado in this area.

3. Seasonal Peaks and Valleys: The passage of the Fair Labor Standards Act has created a small problem in this area. The City employs seasonal recreational workers and lifeguards due to the nature of Coronado being a summer tourist attraction. These workers are required to work occasionally over forty hours per week during the summer months. Therefore, the City will now be required to pay overtime at time and a half to these workers where in the past we were not required to pay this overtime since the employees were paid on an hourly basis based on hours actually worked.

4. Training: The City of Coronado has not encountered or does not anticipate any problems in this area.

5. Incentives: The City does not anticipate any problems nor has encountered any problems in this area.

6. Compensatory Time: The basic abolition of compensatory time will result in increased overtime cost to the City of Coronado in that the City will be required to pay its overtime in cash instead of the prior method of compensating the overtime by providing the employee with time off in the future.

7. Joint Employment: This area will not significantly impact the City of Coronado, however, there may be isolated circumstances where employees are currently working two distinct jobs for the City. However, in the future, the employee will be required to terminate his second job.

8. Social Services: It is not anticipated that the minimum wage rate will significantly impact the City of Coronado due to the fact that our lowest paid hourly position meets the minimum wage requirement under the Fair Labor Standards Act.

9. Leave: This area will not create a problem for the City of Coronado in that the City only pays overtime for those hours actually worked. However, the City does pay time and a half overtime for all overtime worked over 8 hours a day and/or 40 hours a week. This applies to all classifications except the Fire Department and non-permanent hourly positions.

10. Changing Pay From Annual or Monthly to Hourly: Since the adoption of the Fair Labor Standards Act, no additional City employees have been put on hourly wages. The only hourly employees are those which have always been paid on an hourly basis, and those are typically the Recreation workers, lifeguards, and other intermittent employees.

In conclusion, the most significant impact of the City of Coronado is in the area of the fire service. The City currently has a 63-hour work week for all firemen. Effective January 1, the maximum amount of hours that a fireman can work without being compensated overtime is 60 hours per week which will require that the City either pay the additional overtime required or reduce its work week to 60 hours. The additional cost to the City if the City were to pay the required overtime in lieu of lowering the work week would amount to $33,363.00 in

1975, $59,363.00 in 1976, and $111,363.00 in 1977.
If you need additional information, please advise.

Sincerely,

/s/ R. C. Oakley
Richard C. Oakley
Assistant to the City Manager
Personnel

Defendant's Exhibit No. 26

CITY OF SUMTER
SOUTH CAROLINA
29150

September 19, 1974

Mr. Allen E. Pritchard, Jr.
Executive Vice President
National League of Cities
1620 Eye Street, N.W.
Washington, D.C. 20006

Dear Mr. Pritchard,

In reply to your recent inquiry, following are the effects of the Fair Labor Standards Act (FLSA) upon the operation of the City of Sumter, South Carolina.

1. Overall budgetary effect.

Faced with a prior year budget deficit, additional annual salary adjustments, requirements to reach $1.90 minimum wage plus an estimated $125,000 annual salary cost that will become effective January 1, 1975 places the city in a severe financial dilemma. The increase of the minimum wage to $1.90 per hour not only affects the employee receiving less than that now but also the entire pay scale from top to bottom. If the lowest wage is increased all other wages must also be increased to maintain the relative degrees between pay grades. This upward "domino effect" is directly inherent in the implementation of FLSA and is actually the greatest single cost factor involved. This total increase of approximately $235,000 for adjusted salaries, plus rising prices for all other items procured, leaves the city with only two alternatives:

(a) Substantial tax and utility rate increases, and/or
(b) Reduction of services.

Both of these alternatives are deplorable since they have the effect of lowering the discretionary income of the poor, the middle class worker, and especially the senior citizens who have to survive on a fixed income. Effective July 1, 1974 our tax millage *was* increased seventeen mills (30%) and our utility rates were increased approximately forty percent. The FLSA laid these added burdens on our citizens.

2. Compensatory time.

The most unfortunate provisions of the FLSA reguarding employee moral are those dealing with compensatory time. Our employees in the past have taken compensatory time in lieu of payment. Now, under FLSA we have had to stop compensatory time

except during the pay period in which it was earned which is usually unfavorable to both the city and the employee. The workload generating the extra work normally extends several days which usually precludes the city from being able to let the employee off within the pay period, and the employee would rather save his compensatory credits until such time that he can use them for some special occasion, i.e. long week-end, fishing trip, etc.

In the Fire Department, firefighters often "come-in" one-half hour, an hour, or even a whole day for their friends who need to leave "early" or to be "off". This practice is very acceptable to the man and the city in that one qualified man works for another. However, under FLSA and the Department of Labor (DOL) interpretations thereto, this practice has had to be discontinued.

It is estimated that the loss of compensatory time as a feasible, workable means of compensating employees will cost the city and the local taxpayers not less than $20,000. From the tax payers viewpoint, this amount alone represents a 1.3 millage increase in property taxes. Some rulings allowing mutually agreeable "switching" of work hours and compensatory time are badly needed. Without these, the employees, whom the law is designed to help, are the ones ultimately to be hurt.

3. Fire Fighters who work part-time.

Presently, there are fourteen firefighters who work in other city departments on their days off from the fire department. As of January 1, 1975 these firefighters will lose their part-time work because of the sixty hour maximum work, or because they will lose their firefighter status and thereby be eligible for overtime after forty

hours per week, or both. These men now work an average of twenty hours per week in their part-time positions.

This is another example of the law hurting the people it was designed to help. Under the present rulings, the city cannot afford to continue to allow the firefighters to supplement their income through other employment with the city. This seems especially foolish since they can work the same or more hours with another employer. Because the city will simply terminate the part-time firefighters, the firefighters lose.

It seems that firefighters should have the same opportunity to work for the city on their "days-off" as for any other employer. To fill the void left after the part-time firefighters are terminated, the city will be forced to hire fulltime people to accomplish part-time job requirements; the direct cost to the city, not counting a corresponding loss of productivity, will exceed $23,000.

4. Marginal employees.

The city employs approximately five people who are marginally productive due to age, lack of training, and/or lack of ability. Before implementation of FLSA these people were employed below $1.90 per hour because their productivity in the job they performed was below the value of $1.90 per hour. Further, these employees did not want to be on "welfare" but have enough pride to want to work and to pay their own way. However, due to FLSA and the city's economic realities, we have two alternatives:

(a) Waste taxpayers money by employing these people at $1.90 per hour when they cannot produce enough work to justify that wage rate, or

(b) Terminate the employees because they cannot perform the "whole" job.

While it is undesirable, the city has no alternative under FLSA but to terminate them and all other marginal employees. The terminated employees then will become a "social liability" dependent upon the government for their economic survival. This benefits neither society nor the individual.

5. Attendance at meetings after hour.

Some city employees covered by FLSA, such as various staff personnel, codes enforcement inspectors, planning officials, etc. are required as a normal part of their job to attend evening meetings with various governing bodies, review boards, advisory bodies, etc. The requirement to consider these meetings as work time is discriminatory and beyond the intent of FLSA because compensation for the evening meetings is included in the respective salary the same as any other component of the job. To be fair to the employer, if evening meetings are considered work time, the employee's *hourly* rate would have to be reduced, which would immediately open another "Pandora's box" of employee relations problems.

A second point: these employees also are attending the meetings as a part of their training. In most instances the directors, or chief officials in these functions, are exempt from FLSA coverage. Again the city is left with two alternatives:

(a) Employees covered by FLSA would not attend evening meetings, or

(b) Let them attend, with compensatory time and/or overtime as payment for attendance.

With the present financial realities and the current daily work load, alternative "b" is unacceptable. Therefore, the employee is again hurt because he loses his training opportunity and the "prestige" afforded by attending the evening meetings.

6. Sanitation worker's incentives.

Approximately twenty-five sanitation workers are currently working under a daily incentive system. Normally, their actual hours worked average about thirty-two hours per week, but they are being paid for forty hours. Because of the difficulty in recruiting employees to "tote" garbage and the urgent health facets of garbage collection, the city has only no alternative under FLSA but to continue paying for forty hours when less hours are worked, plus overtime for the excess hours over forty. To many sanitation workers, the most important part of his job is the incentive system which permits them to "get-off" an average of two hours early each day. If we started paying for the *actual* hours worked (in other words, remove the task aspect of the job) almost all the sanitation workers in our opinion would quit. Those who did not quit could "slow down" their performance to insure earning overtime. Paying for such a "slow down," or decreased productivity, is economically unacceptable to the city.

The FLSA and the current labor supply, at the minimum, unfairly forces the city to pay for work not performed and, at the maximum, opens "Pandora's box" of unending personnel and financial problems for the city and longer work hours for the employees.

The above paragraphs basically describe the effects of FLSA on the operations of the City of Sumter. In my professional opinion as a career public administrator, the financial effects of the FLSA will be greater than the rather conservative estimates expressed in this report but will not be apparent until more time has elapsed. The provisions of the FLSA, coupled with a discontinuance of Revenue Sharing (should this become a reality – God

forbid) and the continued inflationary spiral will result in financial disaster for many cities. The only general alternatives seem to be:

(a) A drastic increase in local taxation

(b) A drastic reduction of services available to municipal citizens, and/or

(c) The development of radically new methods of municiple operation including revenue generation.

The question then becomes, can "c" occur before the financial disaster arrives and "a" or "b" has to be implemented?

Hopefully this summary will be useful in your efforts. If additional information is needed please let us know. Thanks for your interest.

Sincerely yours,

/s/ Powell Black
R. Powell Black
City Manager

Defendant's Exhibit No. 27

CITY OF LODI
CITY HALL, 221 WEST PINE STREET
LODI, CALIFORNIA 95240
(209) 368-0641

September 26, 1974

Mr. Allen F. Pritchard, Jr
Executive Vice President
National League of Cities
1620 Eye Street, N.W.
Washington, D.C. 20006

Dear Mr. Pritchard:

Mr. Don Benninghoven, Executive Director of the League of California Cities, has asked that we forward to you the impact of the FLSA on local government. In his prologue, he indicated that one of the arguments Mr. Rhyne wants to document is that state and local governments serve as laboratories for experimentation with new and differing personnel practices.

I think that that point is dysfunctional to the problem at hand. If we truly are laboratories, then we should be open to experimentation, tampering and tinkering. I submit that the personnel practices of a city – any city – reflect the local needs of that city in terms of functions performed, ability to pay, level of service and desires of the community. These decisions must be made by the local legislative body and not congress and the body politic of Washington, D.C.

Among the disruptive factors we in Lodi are faced with as a result of the recent amendments to the Fair Labor Standards Act are: Collective bargaining agreements, scheduling, additional personnel, volunteers, training and professional development, joint employment, and payroll computation.

Collective Bargaining Agreements:

For the past five or six years we have negotiated at the table, provisions covering working conditions, hours of work, compensation, time off and the like. This procedure resulted in a great deal of give and take on both sides of the table, but now this law negates some of those provisions or mandates the agreed upon provisions will cost more.

For instance, in our utility operation we do not have need for a full-time night trouble-shooter, but must make provisions to cover emergencies. The agreed-to provisions were that we would pay a man two hours' pay each night to be available for trouble calls – the man is free to pursue his own activities but must be able to be contacted. If he is called out, he is guaranteed two hours pay at time and one-half regardless of the amount of time he worked, and will be paid for any time in excess of 2 hours at the time and one-half rate.

Under the FLSA Act, the "Standby Pay" increases the man's hourly wage when he is required to work because the standby pay for hours not worked increases his hourly rate of pay. This is an unwarranted increase in costs to the city.

In all of our agreements we have provisions for compensatory time off which is earned at the time and one-half rate. This was requested by the employees groups so that the individual could have time available for

personal business. The work was done for the convenience of the employer, but the time off was also taken at the convenience of the employee. Our employees have even complained that compensatory time off is their right, because it is in a contract which Congress has nullified.

Scheduling:

As a result of the 40-hour per week provision, it has been necessary for us to reschedule certain operations that require 24-hour per day manning. In most cases, the changes made were beneficial to the employees and the City. Fortunately, we were able to rearrange schedules so that no additional non-police and fire fighting personnel are required. Previous work schedules were established through the bargaining process and that process has been circumvented through the provisions of this Act.

Additional Personnel:

The regulations on public safety employees have not yet been made available; so we do not know all the ramifications in that area. We do know that it is necessary to add additional personnel to our fire fighters to meet the requirements of the Act. The City of Lodi added two additional fire fighter positions. When we must reduce the work week to 54 hours or less, we must either add personnel or pay additional overtime.

During past years, we have increased fire fighters salaries and wage supplements in lieu of reducing on-duty time – this, as a result of collective bargaining.

The resultant added costs in this area result in reshuffling priorities and reducing other services which are no less important, but because of this law pre-empt such things as recreation and youth programs, additional police coverage, and the like.

Training:

The entire field of water quality is undergoing a metamorphisis of upgrading the capabilities of those persons working in the field as well as keeping up with the state of the art. The State requires certain minimum standards of employees in this field which requires outside study and training. The City has recognized the fact that when a man becomes more competent, he is entitled to more income – that past year we increased the salary of all of our sewer plant operators by 2.5% in recognition of their increased competence by meeting State requirements.

To assist our people in reaching these goals we pay for their tuition, membership and expenses in trade and professional associations and allow them time off to go to their meetings. Because of the provisions of the FLSA we no longer can do this, because we recognize that the City does receive a benefit from their participation. Now we both lose.

The same thing applies to sub-professional engineering positions throughout the City.

Joint Employment:

We hire a number of full-time and part-time custodians, recreation leaders and maintenance personnel. In the past a full-time person could apply for a part-time position in a different department and/or a different function. The City benefited in that we knew the calibre of the work and character of the part-time employee; but the individual benefited in that he could earn extra money if he so desired. As a result of the FLSA, the employee has suffered a reduced income and the City has the expense of processing more personnel – even though our payroll costs will remain the same.

Payroll Computation:

The City of Lodi does not have the benefit of a computer, therefore payroll is computed mechanically. We compute payroll on a monthly basis. When overtime is paid, separate calculations for that particular week must be performed rather than on a monthly basis – this is complicated more when a seven-day period includes the end and the beginning of a month.

As a result the City is having to redo its payroll system. We know one day we must install some sort of electronic data processing, but the more complicated payroll function will move that date forward.

I know I have not covered all the subtle impacts of the Act but I feel I have covered the major impact on the City of Lodi. If we can amplify this data or provide you with further information we will be glad to do so. We strongly support your efforts and urge your strong prosecution of this most important issue.

Very truly yours,

/s/Jerry L. Glenn
Jerry L. Glenn
Assistant City Manager

Defendant's Exhibit No. 28

CITY OF DOWNEY
8425 SECOND STREET
DOWNEY, CALIFORNIA 90241
MAIL ADDRESS: P.O. BOX 607

October 8, 1974

Mr. Allen E. Pritchard, Jr.
Executive Vice President
National League of Cities
1620 Eye Street, N.W.
Washington, D.C. 20006

Dear Mr. Pritchard,

In response to your inquiry on the impact of the Fair Labor Standards Act, the following departmental responses are submitted:

1. Department of Public Works and Community Development

A. Charges for removing tree limbs and sand bagging flooded areas during storms could increase $4,000. annually.

B. While there may be some increase in costs for constructing the Rose Float, sending a crew to Pasadena and back with the float could cost an additional $1,000. because while there, employees work around the clock New Year's Eve to guard the float.

C. With 50 pre-scheduled evening meetings per year, there will be a $500. increase annually in expenses for secretaries to take minutes.

D. The only administrative change has been in the Water Division where during the summer employees worked nine hours from Monday through Thursday, took every other Friday off, and worked eight hours on alternate Fridays (as follows).

S	M	T	W	T	F	S	
	9	9	9	9			
	9	9	9	9			(36 hrs 1st week)
	9	9	9	9	8		(44 hrs 2nd week)

The work week was changed to begin at noon Friday to come up with 40 hours each week as shown below:

F	S	S	M	T	W	T	F	
4			9	9	9	9	0	(40 hrs 1st wk)
0			9	9	9	9	4	(40 hrs 2nd wk)
4			9	9	9	9	0	(40 hrs 3rd wk)
0			9	9	9	9	4	(40 hrs 4th wk)

2. City Clerk-Treasurer

The Fair Labor Standards Act does not enable the Executive Secretary to the City Clerk to receive overtime pay or compensatory time off for the hours she expends at the evening Council meetings.

The secretary accrues at least three hours monthly for overtime at the night Council meetings. Her normal daily routine duties, which include the transcription of Council minutes, makes it very difficult to give time-off from the job during the week in which the overtime hours took place.

In prior years, it was a simple matter of giving her a half-day off from work at a time of the month when her workload was at a minimum. The F.L.S.A. no longer permits this procedure.

3. Fire Department

A. Collective Bargaining Agreement. It has been the policy in the past years to negotiate agreements to allow Comp Time for holiday accrual. Under FLSA, this process has been disallowed. This makes mandatory payment of overtime a necessity.

B. Scheduling. Public Safety Services require unusual mandatory scheduling schemes. The disruption of work schedules mandated by the Federal Government has caused unnecessary hardship and excessive costs with a direct relation to said law.

Example: Pre-Scheduling allows for a 56 hour work week for a fireman on a 27-day cycle. Under FLSA, the mandatory schedule is 56 hours on a 28-day schedule which precludes the 27-day work cycle. Even though the former is more attractive and complies with most work schedulings in use, FLSA pre-empts this particular field.

C. Training. The detrimental effect of paying time and one-half for training assignments in excess of 40 hours will tend to destroy the employer relationship that has developed through upgrading employees at a standard base rate.

4. Police Department

A. The requirements of FLSA are different from those in our City Personnel Regulations relative to overtime. FLSA has mandated different benefits which should be a negotiable item to be bargained for by the employee bargaining unit.

B. FLSA requires now that when calling in a person to work on one of his regular days off, we are required to pay time and one-half as opposed to the previous practice of straight time.

C. Under the new rules, an employee is not allowed to accumulate overtime. This is a serious morale factor in that many employees prefer to accumulate overtime, to be taken later as compensatory time off.

D. FLSA has forced the abandonment of an extremely effective proposal for 12-hour police dispatcher shifts. The scheduling for such a scheme would have resulted in an employee working less than 40 hours during some weeks and in excess of 40 hours in others. This would result in a lower overall manning cost. Under the new law, the City would be required to pay employees time and one-half for work in excess of 40 hours in each week even though the final month's total work time would be the same as it is presently.

E. The Police Department carries on an effective and extensive training program. Much of this activity is requested by employees in order to increase their effectiveness and promotability. Under FLSA, time and one-half would have to be paid for such training over the 40 hour limit.

F. In changing of shifts in the 24-hour police operation there will be many occasions where a person during the first week of a shift, must work in excess of 40 hours, requiring time and one-half.

We trust these responses will be helpful and wish you well in your endeavor.

Yours very truly,

/s/ Charles W. Thompson
Charles W. Thompson
City Manager

Defendant's Exhibit No. 29

NEW JERSEY STATE
LEAGUE OF MUNICIPALITIES
433 BELLEVUE AVENUE
TRENTON, NEW JERSEY 08618

October 4, 1974

Mr. Allen E. Pritchard, Jr.
Executive Vice President
National League of Cities
1620 Eye Street, N.W.
Washington, D.C. 20006

Dear Allen:

Enclosed is a letter which we received commenting on various aspects of the Fair Labor Standards Act amendments which were signed into law last spring. While some of these battles may have been lost in Congress it may be that some of the decisions relating to police and firemen could still be reached when the guidelines and regulations are drafted to be effective next January 1.

Will you please let me have your response to this letter from the Manager of Randolph Township so that I can forward it on to him.

Very truly yours,

/s/ Bob
Robert H. Fust
Executive Director

TOWNSHIP OF RANDOLPH
MUNICIPAL BUILDING
MILLBROOK AVENUE
RANDOLPH, N.J. 07801

September 30, 1974

Mr. Robert H. Fust
Executive Director
New Jersey State League of Municipalities
433 Bellevue Avenue, Room D-403
Trenton, NJ 08618

Dear Bob:

I have received a report from a member of our staff who attended the conference with respect to the Fair Labor Standards Act sponsored by the League and P.S.I. on September 20, 1974. I am extremely concerned with the information provided at the conference and would urge and recommend that the League organize some specific action to coordinate what I feel will be virtually the unanimous opinion of New Jersey officials in seeking changes in several regulations which I consider to be totally improper. The following are just a few examples of items of this type:

1. It is my understanding that if an individual attends some kind of educational or training sessions which are related to his job, the hours spent for this purpose must be included as part of the 40 hour "work week". I would note that we, and many other municipalities, have existing provisions in labor contracts that provide for incentive payments for advanced education. To include

this time as part of the work week would be in direct conflict with legally established collective bargaining agreements and would force us to discourage advanced education of employees, or perhaps even violate these contracts to avoid exceeding the 40 hour work week.

2. We, any many other municipalities, have existing contract provisions with Police Detectives whereby a flat additional amount of money is provided for Detectives due to the irregular hours which are required. The regulations as explained to date, would again cause the same problem as indicated in paragraph 1 above.

3. Another situation of the same type involves formerly established agreements for payment of court time at either straight time rates or at a flat per diem amount. Once again, if this time is included as part of the normal work week, it would aggrevate existing collective bargaining contracts and tend to hinder and slow up the current backlog of court cases by forcing delays in court appearances by Police Officers to stay within the 40 hour work week.

4. We have a situation in Randolph, which I am sure is common in other communities, whereby certain full time employees serve as the Secretary or Staff Person for volunteer boards and commissions. It has been stated that such service for positions which are unquestionably separate from the normal full time positions of the employee are considered to be "dual employment" and that the combined hours for these positions must be calculated in determining whether an individual has worked 40 hours or more per week. To me, this is completely illogical and will clearly result in a detrimental situation for local governments since there is a clear advantage to having an employee who has some knowledge of Township procedures and some responsibilities on a full time basis provide service to part time boards and committees.

I believe Gerry Dorf could perhaps be involved in some of the above questions which relate to union contracts and that some action on a coordinated basis is needed to indicate the desire for changes in the law as explained to date.

Very truly yours,

/s/ Pete
J. Peter Braun
Township Manager

Defendant's Exhibit No. 30

CITY OF PHOENIX, ARIZONA
PERSONNEL DEPARTMENT

September 20, 1974

Allen E. Pritchard, Jr.
Executive Vice President
National League of Cities
1620 Eye Street, N.W.
Washington, D. C. 20006

Dear Mr. Pritchard:

In response to your questionnaire regarding the impact of the Fair Labor Standards Act on municipalities, please be advised that the principal expected impact for the City

of Phoenix is related to the police and fire services. Since we have not received Department of Labor guidelines yet for the public safety area, we are unable to respond definitively in this area. We will, however, advise you just as soon as possible after we have had an opportunity to review the federal guidelines.

The fiscal impact outside of the public safety area for the City of Phoneix is relatively minimal inasmuch as the City has adopted a number of premium pay practices similar to private industry for a number of years. The principal fiscal change will entail an additional annual expenditure of approximately $100,000 in overtime payments for those persons previously receiving compensatory time off.

Many man hours and efforts are also required to review job classifications and individual positions for coverage under the Act. This task is in process now and as yet we have no determination of wholesale changes required.

Sincerely yours,

/s/ R.W. Galloway
Robert W. Galloway
Personnel Director

Defendant's Exhibit No. 31

CITY OF TULSA OKLAHOMA
OFFICE OF THE MAYOR

September 17, 1974

Mr. Allen E. Pritchard, Jr.
Executive Vice President
National League of Cities
1620 Eye Street, Northwest
Washington, D.C. 20006

Dear Allen:

I have received a request from the Oklahoma Municipal League to forward to you a questionnaire with information regarding the impact of the Fair Labor Standards Act upon the City of Tulsa. The questionnaire does not provide the opportunity to define the particular problems which Tulsa may encounter, however, so I am outlining them here.

There are four areas that will cause problems as far as the City of Tulsa is concerned in the future:

1. Record keeping and control will be a problem for the City because of the variety of work weeks established for city employees and the widely dispersed nature of city departments and functions.

2. Compensatory time off for non-uniformed employees also presents a problem. With the passage of the Fair Labor Standards Act, it will be impossible for the city in the future to provide compensatory time off for non-exempt employees. The law provides that after

the passage of 40 hours within a given work week, employees will be compensated at the rate of tame-and-one-half their regular straight time rates for any hours thereafter.

Because of potential budget limitations, and the strict controls placed upon the financing powers of cities in the State of Oklahoma, it may be necessary to curtail services in order to stay within budget boundaries.

3. We anticipate difficulty with provisions on age discrimination in the Fire and Police Departments. Currently, the Fire and Police Departments have an entry age limitation of 21 to 31. The Fair Labor Standards Act provides that employers cannot discriminate against anyone seeking employment if the person is from age 40 to age 65 and has the physical and mental qualifications for a job. This will inhibit our ability to deny employment to applicants who are between the age bracket of 40 and 65 for the Fire and Police Departments.

This can have a serious effect on the Fire and Police retirement plans, and threatens additional potential liability that can be incurred through on-the-job injury.

4. The final major problem we will face is with the Fire Department work week. The City of Tulsa Fire Department now works a 240-hour work month. Starting January 1, 1976, Fire Department employees who are now working a 24-hour work shift will be working an average of eight hours of overtime per month.

Based on the present manpower head count and wage structure in the Fire Department, we can expect a cost to be incurred by the City of Tulsa for overtime payment of $115,200 per year if we continue on the same basic work schedule we now have. We project an additional impact

of $11,500 per year for retirement and other fringe benefits as results of increased wages to be paid to Fire Department personnel. The total potential cost during 1976 would be $126,700.

Starting in January, 1977, firemen will be dropped to 216 hours per month under the Fair Labor Standards Act. This would result in each fireman in the operational divisions receiving 24 hours of overtime pay per month. The total overtime impact for 1977 will be $380,600.

I hope this information will be helpful in determining whether a challenge will be filed against the act.

Let me add here my personal thanks for your taking the time to participate in the Oklahoma Municipal League's convention here last week. Your contribution to the program was appreciated.

Sincerely,

/s/ Robert J. LaFortune
Robert J. LaFortune
Mayor

Defendant's Exhibit No. 32

CITY OF SUNNYVALE CALIFORNIA
DEPARTMENT OF ADMINISTRATION

October 7, 1974

Mr. Allen E. Pritchard, Jr.
Executive Vice President
National League of Cities
1620 Eye Street N. W.
Washington, D. C. 20006

Dear Mr. Pritchard:

Enclosed is a communication from the Director of Public Safety listing the impact of the FLSA overtime provisions in fire services on the City of Sunnyvale.

The annual cost of the overtime requirements would be $11.78 per hour for officers and $13.60 per hour for lieutenants for calendar 1975; 10% more for calendar 1976; and 10% more for calendar 1977. Translated into work hour dollars the cost in 1975 would be $169,212; in 1976 $186,133 and in 1977 $204,746. The total for all three years would be $560,091. This additional cost is for a lower level of service.

Please note the additional scheduling problems which are as realistic a difficulty as the additional cost. If such legislation had been passed with proper analysis of the mathematics of cycles, a six week cycle should have been used–not the four week. This note is aside from the other considerations voiced.

Sincerely,

/s/ W. T. Hopkins
W. T. Hopkins
Assistant City Manager

CITY OF SUNNYVALE
CALIFORNIA

September 30, 1974

To: Assistant City Manager

From: Chief, Dept. of Public Safety

Subject: Work Hours for Fire Service

In our discussions concerning recent legislation reducing the number of hours that fire service may work during a seven-day peroid, the following information is submitted.

During the calendar year 1975, under the most adverse ruling by the Department of Labor, Sunnyvale would have to provide an additional 13,728 work hours in the fire stations. In 1976, this would increase to 16,016: and in 1977, to 20,259.

Developing the additional man hours required to comply with legislation, however, does not necessarily solve the problem since hours are not necessarily capable of being computed into bodies for proper scheduling. For example, there is no way to schedule a 54-hour week.

My best estimate is that by January, 1977, we would have to have an additional fire shift consisting of six Lieutenants and sixteen Public Safety Officers for a total of twenty-two additional bodies.

/s/ G. K. H.
George K. Hansen

Defendant's Exhibit No. 33

CITY OF CORCORAN
1033 CHITTENDEN AVENUE
CORCORAN, CALIFORNIA 93212
(209) 992-2151

September 25, 1974

Mr. Allen E. Pritchard, Jr.
Executive Vice-President
National League of Cities
1620 "I" Street N.W.
Washington, D.C. 20006

Dear Mr. Pritchard:

The Fair Labor Standards Act of 1974 has in several instances disrupted Municipal Administration and personnel practices within the City of Corcoran. Many of these disruptions have necessitated a shifting of resources. The results of this shifting will be immeasurable as services and community projects are deferred to meet the costs proposed and mandated on the City by the Fair Labor Standards Act.

The City of Corcoran, a community of 6,000 people, located in the southern San Joaquin Valley, has attempted to outline by example, some of the disruptions as they relate to City services and our capabilities to deliver those services.

I. FIRE. Prior to the adoption of the FLSA, the City of Corcoran's Fire Department was comprised of five paid full time personnel and complemented by a

volunteer force of seventeen personnel. We have been able to maintain a fire rating of 4, as deficiencies in the area of personnel were minimal. Scheduling for the department has been done on the basis of a 3 on - 3 off shifting to constitute 183 shifts a year. This shifting has been reached through a meeting/conferring process between the City of Corcoran and the department's association as required by the Meyers-Millias-Brown Act, the State of California's Public Labor Statute. An 84-hour duty week has not been felt, by the department personnel, to be detrimental to their health and safety, because of the small number of responses made by the Department. Under the Fair Labor Standards Act, a mandated reduction of nearly 30% in working hours would result in the following:

1. An increase in the hourly rate of pay by nearly 30%.

2. Necessitate the City employing two additional personnel at an estimated annual cost of $18,000.

3. Reduce the amount of inservice training time available because of the high costs of calling personnel in for overtime for training.

4. Cause remodeling of the City's station, prior to scheduling because the need to house additional personnel.

II. POLICE. Prior to the adoption of the FLSA, the City of Corcoran's Police Department was comprised of 15 full time personnel and complemented by a reserve force of ten. We feel that we have been able to maintain a low crime rate in Part I and Part II offenses because of some donated time on behalf of the men of the department and the reserve force.

The Police Department is also responsible for running and maintaining the City's Ambulance Service on an

overtime basis, but generally ranged at the convenience for the personnel involved. Under the Fair Labor Standards Act, mandated requirements will result in:

1. A reduction in department training, such as weapons' practices, due to the high costs of overtime for personnel called to service.

2. An alteration of ambulance services, because of the overtime requirements in training personnel sufficiently to operate the ambulance.

III. PUBLIC WORKS. Prior to the adoption of FLSA, the City of Corcoran's Department of Public Works was comprised of twenty full time personnel. They are responsible for water, solid waste, sewage, and parks maintenance. The City has been successful in meeting the Environmental Protection Agency's requirements in the areas of sewage treatment and solid waste disposal by maintaining shifting, consistent with available manpower within the Department while remaining consistent to the City's service level requirements. Scheduling for the refuse personnel has been on a 48 hour, 6 days a week basis. This shifting was reached on a meeting/conferring basis between the City of Corcoran and the Department's Association. Premium pay has been paid and an incentive has been provided to the crews who finish their prescribed routes in less than the eight hours duty.

Under the Fair Labor Standards Act, mandated payment requirements will result in:

1. An increase in the hourly rate of pay to refuse department employees by nearly 20%.

2. The necessity to hire two additional personnel at an estimated annual cost of $16,000.

3. The necessity to purchase additional refuse equipment to allow for a rescheduling of routes to meet the 40 hour work week requirement.

IV. GENERAL AREAS. Of the City's 48 employees, 39 are represented by an Association for the purposes of meeting/conferring with the City on issues of wages, hours, and other fringe benefits. The City of Corcoran and the Employees Association, through this meeting/conferring process, have in the past agreed to:

1. Straight time payment for hours worked beyond normal shifting. The adoption of FLSA and the mandating of payment of time and a half for overtime worked is estimated to cost the City an additional $10,000 annually.

2. Leaving to the employee's option to take overtime worked in the form of pay or compensatory time off. With the adoption of FLSA, this option has been taken away from the employees and will result in the additional costs of $5,000 a year to the City.

As previously mentioned, this disruption created by the adoption of FLSA is only partially measurable. It is estimated, by the examples given above, that the FLSA will cost the City annually approximately $49,000 to meet the mandates of the hours and wages provisions. What is immeasurable, is the fact that these costs will:

1. Defer the implementation of designed future services and programs because revenues will not be there to see them implemented.

2. Result in increased utility fees and tax rates to the citizens of Corcoran to meet the FLSA mandates.

Your consideration, to these facts, will be greatly appreciated.

Sincerely yours,

/s/ Thomas I. Smith
Thomas I. Smith
City Manager

Defendant's Exhibit No. 34

CITY OF COLUMBIA
SOUTH CAROLINA

27 November 1974

Mr. N. Alex Bickley, President
National Insitute of Municipal Law Officers
839 – 17th Street, N. W.
Washington, D. C. 20006

Dear Mr. Bickley:

This is in reply to your request for information regarding fire and police services and their status vis-a-vis the FLSA of 1974.

The City of Columbia presently has 216 law enforcement officers and 230 personnel engaged in fire protection service. These figures include all job classes covered under the Act.

This year's budget for personnel services is $2,546,945 for the police department and $2,388,103 for the fire department.

In regards to the police department, we anticipate only a minimum in additional costs and no reduction in service attributable to the Act since we have had a 42 1/2 hour work week in effect for quite some time and were well above minimum wage considerations.

Within the fire department, we have no minimum wage problems, but do anticipate some increase in overtime compensation for the coming year. We anticipate no reduction in service. The following year it will be

necessary for us to put on a minimum of twelve additional firefighters to meet schedule compliance with the Act. This would mean an estimated annual increase of approximately $110,000.

One prime area that is likely to suffer within both our fire and police departments is in training. Since all job related training is compensible, and since training programs are difficult to arrange during scheduled work hours for these departments, decreased in-service training is a likely result.

This of course is just as damaging in the long run, and mitigates efficiency of these departments just as much as an outright decrease in service.

No firm determination has been made as yet as to the method for raising revenues to meet these new costs. In relation to the inflationary picture the FLSA will register an annoying, but certainly lesser problem with us. The combined effect, however, most likely will result in an ultimate tax increase.

Thank you for the opportunity to voice our concern.

With kindest regards.

Sincerely,

/s/ Kenneth L. Westmoreland
Kenneth L. Westmoreland
Administrative Assistant

Defendant's Exhibit No. 35

CITY OF RICHMOND
DEPARTMENT OF LAW
RICHMOND, VIRGINIA 23219

December 5, 1974

Mr. Charles S. Rhyne
National Institute of Municipal
Law Officers
839 17th Street, N. W.
Washington, D. C. 20006

Dear Charlie:

Attached please find copy of Alex's letter to all municipal attorneys dated November 18, 1974 concerning FLSA. You will note that I have supplied the information opposite each question asked.

I hope this will be of some help.

Sincerely,

/s/ Conard
C. B. Mattox, Jr.
City Attorney

NATIONAL INSTITUTE OF
MUNICIPAL LAW OFFICERS
839 - 17th STREET, N.W.
WASHINGTON, D.C. 20006
[202] 347-7996

November 18, 1974

Dear Municipal Attorney:

As you are aware, one of the subjects presented at the recently conducted NIMLO Conference in San Diego was the constitutionality of the 1974 Amendments to the Fair Labor Standards Act. Mr. Thomas M. Utterback, City Attorney of Cape Girardeau, Missouri, in his presentation, stated with respect to possible court challenges:

> "Far too long, states have shirked their obligations, and it is that vacuum the Federal Government has filled. For this reason, it is important to have a substantial record based on testimony from real live people as to the nature of state and/or local government and the impact of FLSA '74 on state and local government."

The National League of Cities is presently in the preparation stages of a challenge to the constitutionality of the 1974 Amendments to the Fair Labor Standards Act. We need factual information which would clearly illustrate fiscal impact or trade-offs which must now be made by cities due to application of the FLSA. Charles S. Rhyne has been chosen by the National League of Cities as Counsel in their action.

Of paramount interest is the following information regarding fire and police protection services. Figures should be estimated and computed without regard for the as yet unpublished regulations.

1. The number of police presently employed. 572

2. The number of firemen presently employed. 523

3. The amount presently budgeted for police. $8,998,700

4. The amount presently budgeted for firemen. $7,149,000

5. The estimated increase in amount due to the FLSA amendments for police. None

6. The estimated increase in amount due to the FLSA amendments for firemen. $161,000 for period 1/1/74 – 6/30/75 (20 additional firefighters)

7. The sources of necessary increases in revenues to meet these new costs, i.e., the amounts which will come from:

a. decrease in police personnel
b. decrease in firemen personnel
c. elimination of other government services
d. any other source Unappropriated reserve

Any additional experiences regarding fiscal organizations as required by FLSA of functions which only government can perform would be appreciated. Include the same information as above, being sure to state the number of employees, and annual amounts affected with as much specificity as possible.

Your prompt attention is appreciated.

Sincerely,

/s/ N. Alex Bickley
N. Alex Bickley
President

Defendant's Exhibit No. 36

CITY OF REIDSVILLE
MUNICIPAL BUILDING
220 WEST MOREHEAD STREET
NORTH CAROLINA 27320

December 2, 1974

Mr. N. Alex Bickley, President
National Instutute of Municipal Law Officers
839 – 17th Street, N. W.
Washington, D. C. 20006

Dear Mr. Bickley:

In response to your letter of November 18, 1974, we have calculated the following:

I. Police Department: Number of policemen presently employed – 40

The amount presently budgeted for police –

a. Patrol Division – $282,085.00 Salaries
– $356,049.00 Total
b. Traffic Division – $ 24,684.00 Salaries
– $ 98,384.00 Total

The estimated increase in amount due – 2.5 overtime hours/week/man or $33,567.84.

Sources to meet these new costs – funds would have to be transferred from the General Fund or Revenue Sharing to the Police Department's line items, placing a great hardship on the City.

II. Fire Department: Number of firemen presently employed – 22

The amount presently budgeted for fire –

a. Salaries $193,629.00
b. Total $270,584.00

The estimated increase in amount due – the City would be caused to employ three (3) additional firemen at a cost to the City of $30,635.00 placing an additional hardship on the budget to that indicated above.

Sources to meet these new costs would be the same as above.

If we can be of additional help please feel free to contact us.

Sincerely yours,

/s/ Charles K. Beck
Charles K. Beck
City Manager Intern

Defendant's Exhibit No. 38

BYRLEY, CHARLES A. – Biographical Sketch
[as of October, 1974]
Born and reared: Corbin, Kentucky
Undergraduate and graduate work: University of Kentucky
Kentucky State Government (10 years):
Deputy Commissioner of Finance;
Deputy Commissioner of Highways;
Deputy to the Governor
Council of State Governments (6 years; Chicago, Illinois):
Director, Midwestern Office;
Secretary-Treasurer, Midwestern Governors' Conference;

Executive Secretary, National Association of State Budget Officers;
Executive Secretary, National Association of State Purchasing Officials;
Secretary-Treasurer, National Conference of Lieutenant Governors
*Director of Federal-State Relations, National Governors' Conference (Washington, D. C.): March, 1967, to March, 1974
*Director, Washington Office, Council of State Governments: July, 1968, to June, 1974
Executive Director, National Governors' Conference, Washington, D. C.: March, 1974, to present [1150 Seventeenth Street, N.W., Washington, D. C. 20036 Telephone: 202/785-5600]

Additional information available upon request.

*Positions held concurrently.

Defendant's Exhibit No. 39

WYOMING
EXECUTIVE DEPARTMENT
CHEYENNE

December 20, 1974

Mr. Charles A. Byrley
Executive Director
National Governor's Conference
1150 Seventeenth Street, N.W.
Washington, D. C. 20036

Dear Charlie:

I must formally express my concern with respect to the negative budgetary impact recent amendments to the Fair Labor Standards Act have brought to bear upon the State of Wyoming.

It is clear that inadequate attention was given by Congress with respect to the disruptive effect the subject changes would have on State Personnel management systems.

Even more apparent is the significant increase in costs associated with the requirement that additional classes of public employees have been made eligible for overtime pay. At the State level, the unanticipated cost of expanded overtime pay coverage will equal $2,415,103 for the period May 1, 1974, through the fiscal biennium 1975-77. At a time when state agency budget requests exceed projected revenues, it is disheartening to have additional burdens placed upon our fiscal apparatus. The

failure of Congress to weigh carefully the financial repercussions of the broadened overtime pay requirements will operate to bring undue hardships upon the State at a most inappropriate time; obviously the effect upon local governments most of which are confronted with limited financial resources will be equally apparent.

Needless to say, the fact the effective date of coverage, May 1, 1974, does not coincide with the State's budget/appropriation cycle beginning in July of each biennium hampers our ability to comply immediately with the revised provisions of the Act.

You have my support in any effort you undertake to redress this situation.

With best regards, I am

Sincerely yours,

/s/ Stan Hathaway
Stan Hathaway
Governor

Defendant's Exhibit No. 40

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
ANNAPOLIS, MARYLAND 21404

December 20, 1974

Mr. Charles A. Byrley, Director
Office of Federal-State Relations
National Governors' Conference
1150 - 17th Street, N. W.
Washington, D. C. 20036

Dear Mr. Byrley:

Mr. Edmond Rovner of the National Governors' Conference recently requested that I make available to you certain information concerning the implementation of the Fair Labor Standards Act enacted by the Congress in July 1974. Specifically, Mr. Rovner was concerned with the impact of the overtime provisions of the Fair Labor Standards Act on State governments and State budgets.

I have been informed by the Maryland Department of Personnel that overtime regulations governing Maryland's State employees substantially conform with the provisions of the Fair Labor Standards Act relating to overtime compensation. Accordingly, the effect of that Act on the Maryland State budget will not be as great as the effect on the budgets of many other States. It is our judgment that full compliance with the overtime provisions of the Fair Labor Standards Act will result in

an additional annual expenditure of approximately $2.25 million.

If you have any further questions regarding this matter, I suggest that you contact Secretary Henry Bosz of the Maryland Department of Personnel.

Sincerely,

/s/ Marvin Mandel
Marvin Mandel
Governor

Defendant's Exhibit No. 41

EXECUTIVE OFFICE
STATE OF MISSOURI
JEFFERSON CITY

October 28, 1974

Mr. Terry Smith
National Governors' Conference
Office of Federal-State Relations
1150 Seventeenth Street, N.W.
Washington, D. C. 20036

Dear Mr. Smith:

Governor Bond has asked me to reply to your special letter regarding the proposed Department of Labor rule concerning salary levels to be used for minimum wage exemptions.

The Missouri Department of Labor and Industrial Relations surveyed departments of the executive branch representing 46 percent of the state's total work force. The survey encompassed personal service wage rates for the "Executive/Administrative" and "Professional" categories funded by state revenues.

Of the group surveyed, there were 1181 employees classified in the affected categories and salary ranges. The annual monetary impact of the proposed rule change for this group would amount to approximately $1.5 million. Extrapolation of this dollar amount indicates the total monetary impact upon State revenues for all personal services would be in excess of $3.1 million annually, depending upon the wage rate spread utilized.

Governor Bond is concerned, in an era of announced "belt-tightening" by the President, that the dollar impact noted above will run contradictory to the goal of reducing inflation. The timing of this six-month study is simply, inappropriate. In this instance, rather than eliminating outmoded government regulations to spur savings, which is being urged by the President, the opportunity exists to table a potentially expensive study.

These financially troubled times dictate prudence and constraint at all levels. In our estimation, this proposed study should be postponed.

Sincerely,

/s/ Perry A. Roberts
Perry A. Roberts
Executive Assistant

Defendant's Exhibit No. 42

STATE OF ARKANSAS
DEPARTMENT OF FINANCE AND ADMINISTRATION
P.O. BOX 3278
LITTLE ROCK 72203

November 7, 1974

Mr. Charles A. Byrley
National Governors' Conference
Office of Federal-State Relations
1150 Seventeenth Street, N.W.
Washington, D.C. 20036

Dear Mr. Byrley:

The U.S. Department of Labor's proposed wage rate changes for executive, administrative, and professional employees would impose a tremendous financial burden on the State of Arkansas. Many employees who are now exempt would become subject to overtime.

These employees are in responsible positions and are expected to work as long as necessary to get the job done. The responsible nature of their work meets all of the current tests for exemption.

The result of the higher wage rates would be to divert funds from a general pay increase, now being proposed for all employees, to the management and professional employees who would work in excess of forty hours a week if they determined extra hours were necessary to accomplish their objectives.

The only other alternative would be to limit these employees to forty hours a week with a consequent lessening of public services. A time limit on these key employee's productivity would cause critical situations to develop in their relations with the public and reduce the availability of their expertise during the budget process prior to and during sessions of the Legislature.

We are working very hard to bring state employee's salaries up to a level that is competitive within both the state and the region. Arbitrary salary adjustments such as those being proposed serve only to disrupt orderly salary gains for all employees and make efficient and equitable salary administration almost impossible.

We are willing to provide your office with any support necessary to prevent a change in the existing wage rates.

Sincerely,

/s/ Richard R. Heath
Richard R. Heath
Director

Defendant's Exhibit No. 43

STATE OF FLORIDA
OFFICE OF GOVERNOR REUBIN O'D. ASKEW

December 20, 1974

Mr. Charles Byrley
National Governor's Conference
1150 17th Street, N. W.
Washington, D. C. 20036

Dear Mr. Byrley:

We have been requested by your office to submit information as to the financial effects of the coverage of the Federal Fair Labor Standards Act on the State of Florida.

While you recognize that a definite dollar figure would be difficult to substantiate in detail on such short notice we do know that the cost is substantial and the amounts presented herein are our best estimates at this time.

A relatively minor area of coverage relates to the patients working in our hospitals and mental institutions. The Florida Legislature appropriated $500,000 for the seven month period of December 1 through June 30 for this purpose. After much review, we find that this appropriation falls far short of the cost in this area if we are to fulfill the therapeutic needs of the patients and at the same time comply with the Act. Adequate funding of this much needed program with the restaint placed on the state by the Act would require at least $1,625,000 annually.

Federally mandated recordkeeping costs under the Act are substantial. This cost is estimated at $800,000 annually.

Overtime provisions of the Act have caused more expense to state government than any other section. On such short notice we are unable to compile this figure but Mr. Henry Anderson, Fair Labor Standards Coordinator will call you Monday morning with the amount.

Needless to say, the Federal Fair Labor Standards Act has placed a restraint on state government that interferes with our budgeting process and jeopardizes the state's ability to establish policies that are in the best interest of the citizens of the State of Florida.

If we can furnish any additional information, please let us know.

Sincerely,

/s/ Reubin Askew
Reubin O'D. Askew
Governor

Defendant's Exhibit No. 44

OFFICE OF THE GOVERNOR
STATE CAPITOL
DES MOINES, IOWA 50319

December 19, 1974

Mr. Charles A. Byrley
Executive Director
The National Governors' Conference
1150 Seventeenth Street N.W.
Washington, D.C. 20036

Dear Charlie:

This letter is in response to an inquiry today from your office on the impact regarding the 1974 amendments to the Fair Labor Standards Act on the budget of Iowa state government.

The major areas where the amendments will have an effect are the provisions for time and one-half compensation for hours worked over 40 hours per week and also the requirement of a minimum wage for patients who work as part-time help in our social service institutions.

Our budget analysts in the Office of the State Comptroller advise me that these provisions in the amendments will require additional state expenditures of from $3 million to $3.5 million annually.

These additional costs to state government come at a time when we are already in a very tight budget situation.

Best regards.

Sincerely,
/s/ R. D. Ray
Robert D. Ray
Governor

Defendant's Exhibit No. 45

STATE OF VERMONT
EXECUTIVE DEPARTMENT
Montpelier, Vermont

December 20, 1974

Mr. Charles Byrley
Executive Director
National Governors' Conference
1150 Seventeenth Street, N.W.
Washington, D.C. 20036

Dear Mr. Byrley:

This is in response to your request for an estimate of the current and future fiscal impact of the 1974 Fair Labor Standards Act amendments on Vermont state government. My administration is still taking steps to implement the provisions of the 1974 amendments, and some of the figures which I will quote to you are at this time only estimates. It is almost impossible to estimate the full future impact. Nevertheless, I will try to fulfill your request.

The increase in the minimum wage will have very little impact. At the current time the State of Vermont is in compliance with the minimum wage provisions of the Fair Labor Standards Act. We will have to raise the minimum wage beginning January 1, 1976, in order to comply with the 1976 minimums. These minimums would probably have been raised even without the Fair Labor Standards Act requirements, so, in all fairness, I

must say that the minimum wage provisions of the amendments have had little or no effect on the State as an employer.

It is in the maximum hours (overtime) sections of the law that very serious fiscal problems arise. The impact is felt both in increased personal services payments (i.e., higher overtime rates) and in administrative costs. So far, our Department of Highways has paid $100,000 to its district employees as retroactive payment for overtime worked since May 1, 1974. It is estimated that the Department of Highway's overtime costs in all of fiscal year 1975 will be about $200,000 higher than anticipated as a direct result of the new overtime provisions of the Fair Labor Standards Act. Other unanticipated retroactive FY '75 payments which will have to be paid to employees in other agencies of state government so far have amounted to approximately $10,000.

Another potentially large obligation which was completely unanticipated prior to passage of the Fair Labor Standards Act amendments is in the area of earned compensatory time. During the course of FY '75 it is anticipated that, under the provisions of the contract between the State and the employees' union, employees will voluntarily choose to take about 60,000 hours of their earned overtime in compensatory time off rather than cash. If the Department of Labor rules that the State must pay employees for all overtime hours worked in cash rather than allow them to take 60,000 hours in time off, it will increase our cash overtime obligation by approximately $330,000 in FY '75.

Another potential expense which is now pending is a lawsuit brought by some State employees on the basis of the Fair Labor Standards Act which, if the State loses, could cost the State a total of $250,000 more in overtime payments and damages.

As a result of the record-keeping requirements of the Fair Labor Standards Act, the State finds that it is now required to update data processing procedures and forms. New computer programs must be written to comply with Fair Labor Standards Act requirements, and new forms must be printed. The additional unanticipated expense to the State in terms of time, material, and computer costs are estimated at $35,000.

Summing up the actual impact in FY '75, we find the following:

$200,000 – Department of Highway's overtime costs
10,000 – Other agency overtime costs
35,000 – Administrative costs
$245,000 – Actual FY '75 cash impact to date

Furthermore, depending on court decisions and Department of Labor interpretations, the State could also be liable in FY '75 for the following:

$330,000 – Compensatory time cash reimbursement
250,000 – Employee overtime lawsuit
$580,000 – Total potential additional expenses
+245,000 – Actual cash outlay
$825,000 – Grand Total potential FY '75 impact

While the figures noted above are of great concern to me, in a State which, like all others, is in the midst of severe economic and budgetary problems, my concerns for the impact of the law on our future operations are at least as great. For instance, we must hire attorneys on a

contractual basis to defend the State against FLSA lawsuits which can be and are being brought by individual employees, labor unions, or the Department of Labor itself. I cannot reasonably estimate what these service fees might be, although $100 an hour for attorneys' fees, as you know, is not uncommon in the labor relations field. The cost of renegotiating contracts which have been invalidated in part by the Fair Labor Standards Act is very expensive in terms of time and material. It is impossible to place a dollar figure on this factor.

The State may also face additional substantial costs in retroactive overtime pay for certain irregularly scheduled employees such as cottage parents and park managers. In addition, depending on the regulations which the Department of Labor issues this month on law enforcement and fire protection personnel, the State could stand to incur even higher overtime costs, particularly for game wardens and certain airport firemen.

In summary, the Fair Labor Standards Act amendments have had substantial immediate fiscal impact and could have even more wide-ranging fiscal as well as programmatic and philosophic impact on State operations.

I hope these estimates and comments are of some help to you. If I can be of any more assistance, please contact me at any time.

Sincerely,

/s/ Thomas P. Salmon
Thomas P. Salmon

Defendant's Exhibit No. 46

STATE OF WASHINGTON
OFFICE OF THE GOVERNOR
OLYMPIA

November 15. 1974

The Honorable Peter J. Brennan
Secretary of Labor
Department of Labor
Room 3136
14th Street and Constitution Avenue
Washington, D.C. 20210

Dear Mr. Brennan:

The Wage and Hour Division of the Department of Labor will hold a public hearing on Monday, November 18, 1974, to receive testimony concerning regulations to implement the Fair Labor Standards Amendment of 1974. These regulations could have a substantial and a very damaging effect on the services of volunteer fire departments in the State of Washington. I will be grateful to you for your assistance in making known to the Division my views on this matter.

There are over 16,000 Washington citizens who serve as volunteer firemen, providing essential protection and care to their fellow citizens throughout the state. These volunteers respond to emergency calls for fires, and more recently, under the Emergency Medical Assistance ("Medic I") Program. They make themselves available for training and organizational meetings; in some areas they

remain in firehouses through the dangerous nighttime hours, ready to respond to any emergency.

Under the proposed revised regulations, these volunteers would be denied the opportunity to serve. The fire districts which have found it possible to rely upon their services would have to make alternative arrangements. Enormous increases in cost would follow any attempt to maintain existing levels of fire protection, or, even worse, large areas of the state would be left without vital services. Furthermore, I can find no evidence of any volunteer firemen in Washington State requesting the remuneration that is being suggested.

Most seriously though, the traditional concern of Americans for their neighbors in times of need will be denied, while volunteer fire departments will be forced to curtail their services and pay wages, which represent a serious financial burden while still falling far below the rate of earnings which the volunteers receive in their regular employment.

I do not believe this misplaced concept of "fairness" could have been the intent of Congress in the 1974 Amendments to the Fair Labor Standards Act. I hope the regulations issued by the Labor Department will make clear that fire departments may make arrangements for the participation of volunteers in fire prevention and related activities without violating the Fair Labor Standards Act and the Amendments of 1974

Thank you for your assistance in making these views known to the Wage and Hour Division.

Sincerely,

/s/ Daniel J. Evans
Daniel J. Evans
Governor

Defendant's Exhibit No. 47

December 23, 1974

Mr. Charles Byrley, Executive Director
National Governors' Conference
1150 - 17th Street, N.W.
Washington, D. C. 20036

Dear Charlie:

Enclosed find the estimated impact of the 1974 amendments to the Fair Labor Standards Act insofar as the operation of Utah State Government is concerned.

These figures were prepared by the Utah State Department of Finance for your use in the deposition you will be giving in support of the complaint for declaratory judgment to which the National Governors' Conference is a party.

Sincerely,

/s/ Galvin L. Rampton
Governor

FEDERAL MINIMUM WAGE ACT
OF 1974 – IMPACT ON STATE GOVERNMENT

UTAH

Highway Department	$671,400
University & Colleges	454,400
Highway Patrol	260,100
Natural Resources	733,500
All Other Departments	100,000
	$2,219,400

Defendant's Exhibit No. 48

STATE OF CALIFORNIA
GOVERNOR'S OFFICE
SACRAMENTO 95814

December 23, 1974

Mr. Charles A. Byrley
Executive Director
National Governors' Conference
1150 17th Street, N.W.
Washington, D.C. 20036

Dear Charlie:

The State of California supports the action of the National Governors' Conference in joining with the National League of Cities to pursue a constitutional law suit alleging that the 1974 Fair Labor Standards Act amendments are improper and will result in serious financial impact upon state and local governments. Further, we support and commend the additional effort to seek an injunction against implementation of the law until the constitutional question is answered.

As you perhaps know, the State of California has provided the Department of Labor with substantial information on the impact that implementation of the FLSA would have on our state. I am most disappointed to find that virtually none of our suggestions have been accepted, and I am particularly concerned that the proposed regulations do not exempt mutual aid services from the overtime provisions of the wage and hour portions of the law.

We are estimating that the cost for the State of California to implement the 1974 Fair Labor Standards Act amendments will be approximately $16,000,000. Wage and hour provisions, and overtime pay and procedures could result in considerably higher costs to the State.

I must inform you, in reading the proposed regulations to implement the FLSA, I was surprised to find that an "Inflationary Impact Report" was not included. In President Ford's "Whip Inflation Now" (WIN) Speech, he stated that all new regulations and legislative enactments would have to be accompanied by an "Inflationary Impact Report". I applauded this action by the President because I firmly believe the government must lead the fight on inflation and set the example. This, however, does not appear to be the case with the 1974 Fair Labor Standards Act amendments.

We are certain that the inflationary impact of the proposed regulations now slated to go into effect on January 1st are so massive as to be difficult to measure. This is just another example of the citizenry bearing additional costs for government services without concurrent increases in the level or quality of services rendered. I feel it is essential that every effort be made to obtain an injunction against implementation of the FLSA amendments so that not only the constitutional question can be answered, but also so that an "Inflationary Impact Report" can be prepared, as required, so that it can be seen, in perspective, what effect these regulations will have on the economy of all 50 states and every local government.

The State of California has great concerns and major reservations about the amendments to the Fair Labor

Standards Act of 1938 and to the propriety of the Federal Government attempting to mandate on other levels of government decisions that rightfully are, and ought to be, made by their own elected officials. We are accutely aware of the impact that these regulations will have on the State of California, and continue to oppose the implementation of same.

Sincerely,

/s/ Ronald Reagan
Ronald Reagan
Governor

Plaintiff's Exhibit No. 1

BIOGRAPHICAL DATA

Name:

Allen E. Pritchard, Jr.

Residence:

627 Goldsborough Drive, Rockville, Maryland 20850

Telephone: (301) 762-1856

Office:

1612 K Street, N.W., Washington, D.C. 20006

Telephone: (202) 293-6915

Born:

June 2, 1921 at Niles, Ohio. Parents – Allen E. and Olive V. Pritchard (retired)

3712 Kay Place, Sarasota, Florida

Married:

April, 1944 to Mary Louise Zeller, Niles, Ohio – parents deceased

Children:

Allen E., III, 27; Mary Lou, 25; Elizabeth Ann, 23; Joseph Z., 14

Education:

Niles McKinley High School, Niles, Ohio

Miami University, Oxford, Ohio – 2 years

University of Colorado, Boulder, Colorado – 2 years – B.A., Economics and Political Science

University of Colorado, Boulder, Colorado – 38 quarter hours toward Master's Degree in Public Administration and 20 additional quarter hours in undergraduate courses

Military Service:

Air Force, World War II – October 28, 1942 – March 8, 1946. 23 months service in South Pacific. Discharged as a Staff Sargeant.

Occupational Experience:

Colorado Municipal League, Boulder, Colorado, Research Assistant
February, 1947 – June, 1947

Colorado Municipal League, Boulder, Colorado, Executive Secretary
June, 1947 – April, 1948

League of Wisconsin Municipalities, Madison, Wisconsin, Assistant Executive Secretary
April, 1948 – September, 1952

Ohio Municipal League, Columbus, Ohio, Executive Director
September, 1952 – September, 1955

League of Kansas Municipalities, Topeka, Kansas, Executive Director
September, 1955 – February, 1960

Municipal Manpower Commission, Washington, D.C., Staff Director
February, 1960 – April, 1962

United States Senator James B. Pearson of Kansas, Administrative Assistant
April, 1962 – August, 1965

Joint Council on Urban Development (National League of Cities – U.S. Conference of Mayors) Administrator
November, 1965 – September, 1966

National League of Cities, Assistant Executive Director and Director of Congressional Relations,
September, 1966 – February, 1970

National League of Cities, Deputy Executive Vice President
February, 1970 – June, 1972
National League of Cities, Executive Vice President
July, 1972 – present

Publications:
Editor – Colorado Municipal Journal, Ohio Cities and Villages, Kansas Government Journal;
Associate Editor – Nation's Cities;
Author – numerous technical papers and articles on American local government

Special Assignments:
Member – Nixon Transition Task Forces on: Intergovernmental Fiscal Policy; Public Welfare; Housing and Urban Renewal
November, 1968 – January, 1969
Member – HEW Task Force on HEW Interagency and Interprogram Relations
February, 1969
Chairman – HUD Task Force on Model Cities
March, 1969

Affiliations:
Phi Kappa Tau Fraternity (president and graduate advisor); Inter-fraternity Council; Kiwanis, Columbus, Ohio; Rotary, Topeka, Kansas; Executive Committee, American Municipal Association (now National League of Cities), 1955-1958; Methodist; Mason.

Hobbies:
Golf and camping

Joint Exhibit No. 4(c): (39 Fed. Reg. 44141)

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PART III

DEPARTMENT OF LABOR

Wage and Hour Division

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Employees of Public Agencies Engaged in Fire Protection or Law Enforcement Activities (Including Personnel in Correctional Institutions)

Title 29—Labor

CHAPTER V—WAGE AND HOUR DIVISION

PART 553—EMPLOYEES OF PUBLIC AGENCIES ENGAGED IN FIRE PROTECTION OR LAW ENFORCEMENT ACTIVITIES (INCLUDING SECURITY PERSONNEL IN CORRECTIONAL INSTITUTIONS)

The Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended, 29 U.S.C. 201 et seq.), as amended by the Fair Labor Standards Amendments of 1974 (Pub. L. 93-259), 88 Stat. 55), extends the Act's minimum wage, overtime, equal pay and recordkeeping requirements to most public agency employees. In the case of certain public agencies (i.e., those having employees engaged in fire protection and law enforcement activities, including security personnel in correctional institutions), application of the Act's overtime provisions was delayed until January 1, 1975. This delay was accomplished by new section 13(b)(20) which provided an interim overtime exemption for all such employees regardless of the size of the employing public agency. Effective January 1, 1975, however, the section 13(b)(20) exemption will, by its express terms, be limited to fire protection and law enforcement employees who are employed by a public agency which has, during the workweek, less than five employees so engaged. For larger public agencies having such employees, the Act provides, in section 7(k), a partial overtime exemption which, by its express terms, becomes effective January 1, 1975. These two sections are self-executing and do not depend upon administrative rules or regulations.

On May 17, 1974, however, the Acting Administrator of the Wage and Hour Division, United States Department of Labor, recognizing the need for the issuance of guidelines for interpreting the new and unique overtime exemptions relating to these public agency employees, published in the FEDERAL REGISTER (39 FR 17596) notice of a hearing scheduled for June 3, 1974, to obtain evidence and receive comments regarding the duties, customs, practices, and working conditions of such employees.

The public hearing, which was held as scheduled on June 3, 1974, lasted two full days, during which time 11 individuals and organizations testified and 143 related exhibits were made a part of the hearing record.

Thereafter, on October 30, 1974, the Administrator of the Wage and Hour Division, after reviewing the hearing record in light of the express language and legislative history of the sections 7(k) and 13(b)(20) exemptions, issued proposed regulations (29 CFR Part 553), defining "employees engaged in fire protection and law enforcement activities" and prescribing tentative guidelines for determining hours worked, the work period and tour of duty, and caused the proposed regulations to be published in the FEDERAL REGISTER (39 FR 38663).

The proposed regulations as thus published invited interested persons to submit written comments, suggestions, data or arguments in regard to them on or before December 2, 1974, and, in addition, scheduled a further public hearing for November 18, 1974. In order to give as wide publicity as possible to all affected public agencies, copies of the proposed regulations were mailed directly to the governors of all 50 States, with informational copies going to every State Attorney General and State Fire Marshal, each of whom was requested to bring the proposed regulations to the attention of interested State and local government officials. In addition, approximately 800

copies of the proposed regulations were mailed to individuals, labor organizations, employer organizations, State and local government officials and agencies, as well as to members of the United States Congress.

The further public hearing, announced in the FEDERAL REGISTER on November 1, 1974, was held in Washington, D.C., on November 18–21, 1974, for the purpose of receiving oral suggestions, proposals and comments on the proposed Part 553 from interested persons. Thirty-eight individuals and organizations testified at this second hearing and approximately 300 related exhibits were made a part of the hearing record, which, along with the June 1974 hearing record, is on file with the Chief, Branch of Wage-Hour Standards, Wage and Hour Division, United States Department of Labor, Room 1107, 711 14th Street, NW., Washington, D.C. 20210.

A thorough analysis of all testimony and written material received in connection with the November 1974 hearing has been made, again in conjunction with the express statutory language and pertinent legislative history. This analysis indicated the desirability of making certain changes and additions in 29 CFR Part 553, as proposed, as well as adding new sections to it for the purpose of calling attention to the existence of other Fair Labor Standards Act exemptions which might be available to public agencies affected by new Part 553, as well as to the Act's recordkeeping requirements which are applicable to all covered employers. Other changes in proposed Part 553 expand the term "any employee in fire protection activities" to include employees of forestry conservation agencies who spot forest or brush fires and help in their extinguishment along with other individuals who are called upon to assist

during periods of emergencies and high fire danger. Similarly, the term "any employee in law enforcement activities" has been expanded to include "border patrol agents," and modified to indicate that fish and game wardens and criminal investigative agents assigned to such offices as those of a district attorney may be engaged in such activities, depending upon the particular facts. Both of the foregoing terms have been further expanded to indicate that bona fide fire protection and law enforcement employees will not lose their exempt status when they perform "support activities" on a rotational assignment for training or familiarization purposes, or for other reasons due to illness, injury or infirmity; the requirement that law enforcement officers be sworn has been deleted, as has the requirement for completed training. The sections dealing with training (§ 553.7), secondary and joint employment (§ 553.9), volunteers (§ 553.11) and "comp time" (formerly § 553.17 and now § 553.19) have been further clarified, and a new section has been added to explain the general rules for determining compensable hours of work. Numerous other minor changes have been made but they are not discussed in this preamble since they can be readily discerned by comparing the proposed Part 553 with the version now to be issued. It was suggested that changes be made in the current definitions of executive, administrative or professional employees, and these suggestions, although not germane to the section 7(k) or 13(b)(20) exemptions, will be considered when 29 CFR Part 541 is reissued. The arguments criticizing the subsections dealing with mutual aid agreements (§ 553.10) and sleep and meal time (§ 553.15) were carefully considered. No substantive changes were made, however, because these subsections restate

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legal requirements which cannot be waived or altered by any official of the Department of Labor. Numerous other arguments were directed to the inflationary or cost impact of Part 553. Whatever impact there is, however, is the result of the 1974 Amendments, which, after Congress had considered these same arguments, expressly extended overtime protection to employees engaged in fire protection and law enforcement activities. Moreover, the extent to which the Act will have a cost impact on such public agencies depends, in large part, upon which of the several alternatives open to them the State and local jurisdictions elect to use. Assuming that all jurisdictions elect section 7(k), without any modification in the present tours of duty, the estimated cost impact of the extension of the Act's overtime requirement for calendar year 1975 is estimated to be $27 million for all such jurisdictions.

In issuing Part 553, it is recognized that the Secretary of Labor has been directed by the 1974 Amendments to conduct a study in calendar year 1976 of the hours ordinarily worked by fire protection and law enforcement employees, and to publish the results thereof in the FEDERAL REGISTER (88 Stat. 61). Now, therefore, pending completion of such study or studies, the final version of Part 553 is hereby adopted on an interim basis to read as follows:

Sec.
553.1 Statutory provisions.
553.2 Purpose and scope.

EMPLOYEES ENGAGED IN FIRE PROTECTION AND LAW ENFORCEMENT ACTIVITIES (INCLUDING SECURITY PERSONNEL IN CORRECTIONAL INSTITUTIONS)

Sec.
553.3 Fire protection activities.
553.4 Law enforcement activities.
553.5 20-percent limitation on nonexempt work.
553.6 Public agency employees engaged in both fire protection and law enforcement activities.

Sec.
553.7 Employees attending training facilities.
553.8 Ambulance and rescue service employees.
553.9 Fire protection or law enforcement employees who perform unrelated work for their own agency or for another public agency or private employer.
553.10 Mutual aid.
553.11 Fire protection and law enforcement volunteers.

RULES FOR DETERMINING THE TOUR OF DUTY, WORK PERIOD AND COMPENSABLE HOURS OF WORK

553.12 General statement.
553.13 Tour of duty.
553.14 General rules for determining compensable hours of work.
553.15 Sleeping and meal time as compensable hours of work.
553.16 Work period.
553.17 Early relief.
553.18 Trading time.
553.19 Time off for excess hours or so-called "comp time."
553.20 The "regular rate."
553.21 Records to be kept.

AUTHORITY: Secs. 1-19, 52 Stat. 1060, as amended; 88 Stat. 60; (29 U.S.C. 201-219).

§ 553.1 Statutory provisions.

(a) In extending coverage to certain public agency employees, the Fair Labor Standards Act (hereafter the Act), by virtue of section 13(b)(20), provided a complete overtime exemption for any employee of a public agency who is engaged in fire protection or law enforcement activities (including security personnel in correctional institutions) during the period between the effective date of the 1974 Amendments (May 1, 1974) to and through December 31, 1974. Beginning January 1, 1975, however, this complete overtime exemption may be claimed only with respect to "any employee of a public agency who in any workweek is employed in fire protection activities or any employee of a public agency who in

any workweek is employed in law enforcement activities (including security personnel in correctional institutions), if the public agency employs during the workweek less than five employees in fire protection or law enforcement activities, as the case may be."

(b) Beginning January 1, 1975, public agencies not qualifying for the complete overtime exemption provided in section 13(b)(20) will be required to pay overtime compensation to their fire protection and law enforcement employees on a workweek basis as required by section 7(a) of the Act unless they elect to take advantage of the partial overtime exemption provided in section 7(k) which applies, not on a workweek basis, but on a work period basis, as follows:

• • • No public agency shall be deemed to have violated subsection (a) with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if—

(1) In a work period of 28 consecutive days the employee receives for tours of duty which in the aggregate exceed 240 hours; or

(2) In the case of such an employee to whom a work period of at least 7 but less than 28 days applies, in his work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his work period as 240 hours bears to 28 days, compensation at a rate of not less than one and one-half times the regular rate at which he is employed.

(B) Effective January 1, 1976, section 7(k) is amended by striking out "240 hours" each place it occurs and inserting in lieu thereof "232 hours".

(C) Effective January 1, 1977, such section is amended by striking out "232 hours" each place it occurs and inserting in lieu thereof "216 hours".

(D) Effective January 1, 1978, such section is amended—

(i) By striking out "exceed 216 hours" in paragraph (1) and inserting in lieu thereof

"exceed the lesser of (A) 216 hours, or (B) the average number of hours (as determined by the Secretary pursuant to section 6(c)(3) of the Fair Labor Standards Amendments of 1974) in tours of duty of employees engaged in such activities in work periods of 28 consecutive days in calendar year 1975"; and

(ii) By striking out "as 216 hours bears to 28 days" in paragraph (2) and inserting in lieu thereof "as 216 hours (or if lower, the number of hours referred to in clause (B) of paragraph (1)) bears to 28 days • • •.

(c) These statutory provisions, as is apparent from their terms, are limited to public agencies and do not apply to any private organization engaged in furnishing fire protection or law enforcement services, and this is so even if the services are provided under contract with a public agency.

(d) In determining whether a public agency qualifies for the section 13(b)(20) exemption after January 1, 1975, the fire protection and law enforcement activities are considered separately. Thus, for example, if a public agency employs less than five employees in fire protection activities but five or more employees in law enforcement activities (including security personnel in a correctional institution), it may claim the exemption for the fire protection employees but not for the law enforcement employees. No distinction is made between full-time and part-time employees, and both must be counted in determining whether the exemption applies. Bona fide volunteers may be excluded. This determination of the number of employees engaged in each of the two named activities is made on a workweek basis.

(e) In addition to the special exemptions provided in sections 7(k) and 13(b)(20), which are the subject matter of Parts 53, the Act provides other exemptions which, depending upon the facts, may be claimed for certain employees in

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lieu of such special exemptions. For example, section 13(a)(1) provides a complete exemption for any employee employed in a bona fide executive, administrative or professional capacity, as those terms are defined and delimited in 29 CFR Part 541, and that exemption may be claimed for any fire protection or law enforcement employee who meets all of the tests specified in Part 541 relating to duties, responsibilities and salary. Thus, although police captains are clearly employees engaged in law enforcement activities, they may also, depending upon the facts, qualify for the section 13(a)(1) exemption, in which event the employing agency may claim that exemption for such employees in lieu of the section 7(k) or 13(b)(20) exemption. Similarly, certain criminal investigative agents may qualify as administrative employees, in which event the employing agency may elect which of the applicable exemptions it will claim for such employees. In no event, however will the election to take the section 13(a)(1) exemption for an employee who qualifies for it result in excluding that employee from the count that must be made under § 553.1(d) in determining whether the employer may claim for its other employees the section 13(b)(20) exemption.

§ 553.2 Purpose and scope.

The purpose of Part 553 is to define the pertinent statutory terms used in sections 7(k) and 13(b)(20) and to set forth the rules by which the Administrator of the Wage and Hour Division will determine the compensable hours of work, tour of duty and work period in applying the section 7(k) exemption.

Employees Engaged in Fire Protection and Law Enforcement Activities (Including Security Personnel in Correctional Institutions)

§ 553.3 Fire protection activities.

(a) As used in section 7(k) and 13(b)(20) of the Act, the term "any employee in fire protection activities" refers to any employee (1) who is employed by an organized fire department or fire protection district and who, pursuant to the extent required by State statute or local ordinance, has been trained and has the legal authority and responsibility to engage in the prevention, control or extinguishment of a fire of any type and (2) who performs activities which are required for, and directly concerned with the prevention, control or extinguishment of fires, including such incidental non-firefighting functions as housekeeping, equipment maintenance, lecturing, attending community fire drills and inspecting homes and schools for fire hazards. The term would include all such employees, regardless of their status as "trainee," "probationary," or "permanent" employee, or of their particular speciality or job title (e.g., firefighter, engineer, hose or ladder operator, fire specialist, fire inspector, lieutenant, captain, inspector, fire marshal, battalion chief, deputy chief, or chief), and regardless of their assignment to support activities of the type described in paragraph (d) of this section, whether or not such assignment is for training or familiarization purposes, or for reasons of illness, injury or infirmity. The term would also include rescue and ambulance service personnel if such personnel form an integral part of the public agency's fire protection activities. See § 553.7.

(b) The term "any employee in fire protection activities" also refers to employees who work for forest conservation agencies or other public agencies charged with forest fire fighting responsibilities, and who direct or engage in (1) fire spotting or lookout activities, or (2) fighting fires on the fireline or from aircraft or (3) operating tank trucks, bulldozers and tractors for the purpose of clearing fire

breaks. The term includes all persons so engaged, regardless of their status as full time or part time agency employees or as temporary or casual workers employed for a particular fire or for periods of high fire danger, including those who have had no prior training. It does not include such agency employees as biologists and office personnel who do not fight fires on a regular basis, except, of course, during those emergency situations when they are called upon to spend substantially all (i.e., 80 percent or more) of their time during the applicable work period in one or more of the activities described in paragraph (b) (1), (2) and (3) of this section. Additionally, for those persons who actually engage in these fire protection activities, the simultaneous performance of such related functions as housekeeping, equipment maintenance, tower repairs and/or the construction of fire roads, would also be within the section 7(k) or 13(b)(20) exemption.

(c) Not included in the term "employee in fire protection activities" are the so-called "civilian" employees of a fire department, fire district, or forestry service who engage in such support activities as those performed by dispatchers, alarm operators, apparatus and equipment repair and maintenance workers, camp cooks, clerks, stenographers, etc.

§ 553.4 Law enforcement activities.

(a) As used in sections 7(k) and 13(b)(20) of the Act, the term "any employee in law enforcement activities" refers to any employee (1) who is a uniformed or plainclothed member of a body of officers and subordinates who are empowered by statute or local ordinance to enforce laws designed to maintain public peace and order and to protect both life and property from accidental or willful injury, and to prevent and detect crimes,

(2) who has the power of arrest, and (3) who is presently undergoing or has undergone or will undergo on-the-job training and/or a course of instruction and study which typically includes physical training, self-defense, firearm proficiency, criminal and civil law principles, investigative and law enforcement techniques, community relations, medical aid and ethics.

Employees who meet these tests are considered to be engaged in law enforcement activities regardless of their rank, or of their status as "trainee," "probationary" or "permanent" employee, and regardless of their assignment to duties incidental to the performance of their law enforcement activities such as equipment maintenance, and lecturing, or to support activities of the type described in paragraph (f) of this section, whether or not such assignment is for training or familiarization purposes, or for reasons of illness, injury or infirmity. The term would also include rescue and ambulance service personnel if such personnel form an integral part of the public agency's law enforcement activities. See § 553.8.

(b) Typically, employees engaged in law enforcement activities include city police; district or local police; sheriffs, under sheriffs or deputy sheriffs who are regularly employed and paid as such; court marshals or deputy marshals; constables and deputy constables who are regularly employed and paid as such; border control agents; state troopers and highway patrol officers. Other agency employees not specifically mentioned may, depending upon the particular facts and pertinent statutory provisions in that jurisdiction, meet the three tests described above. If so, they will also qualify as law enforcement officers. Such employees might include, for example, fish and game wardens or criminal investiga-

tive agents assigned to the office of a district attorney, an attorney general, a solicitor general or any other law enforcement agency concerned with keeping public peace and order and protecting life and property.

(c) Some of the law enforcement officers listed above, including but not limited to certain sheriffs, will not be covered by the Act if they are elected officials and if they are not subject to the civil service laws of their particular State or local jurisdition. Section 3(e)(2)(C) of the Act excludes from its definition of "employee" elected officials and their personal staff under the conditions therein prescribed. 29 U.S.C. 203(e)(2)(C). Such individuals, therefore, need not be counted in determining whether the public agency in question has less than five employees engaged in law enforcement activities for purposes of claiming the section 13(b)(20) exemption.

(d) Employees who do not meet each of the three tests described above are not engaged in "law enforcement activities," as that term is used in sections 7(k) and 13(b)(20). Such employees would typically include (1) building inspectors (other than those defined in § 553.3(a)), (2) health inspectors, (3) animal control personnel, (4) sanitarians, (5) civilian traffic employes who direct vehicular and pedestrian traffic at specified intersections or other control points, (6) civilian parking checkers who patrol assigned areas for the purpose of discovering parking violations and issuing appropriate warnings or appearance notices, (7) wage and hour compliance officers, (8) equal employment opportunity compliance officers, (9) tax compliance officers, (10) coal mining inspectors, and (11) building guards whose primary duty is to protect the lives and property of persons within the limited area of the building.

(e) The term "any employee in law enforcement activities" also includes, by express reference, "security personnel in correctional institutions." A correctional institution is any government facility maintained as part of a penal system for the incarceration or detention of persons suspected or convicted of having breached the peace or committed some other crime. Typically, such facilities include penitentiaries, prisons, prison farms, county, city and village jails, precinct house lockups and reformatories. Employees of correctional institutions who qualify as security personnel for purposes of the section 7(k) exemption are those who have responsibility for controlling and maintaining custody of inmates and of safeguarding them from other inmates or for supervising such functions, regardless of whether their duties are performed inside the correctional institution or outside the institution (as in the case of road gangs). These employees are considered to be engaged in law enforcement activities regardless of their rank (e.g., warden, assistant warden or guard) or of their status as "trainee," "probationary," or "permanent" employee, and regardless of their assignment to duties incidental to the performance of their law enforcement activities, or to support activities of the type described in paragraph (f) of this section, whether or not such assignment is for training or familiarization purposes or for reasons of illness, injury or infirmity.

(f) Not included in the term "employee in law enforcement activities" are the so-called "civilian" employees of law enforcement agencies or correctional institutions who engage in such support activities as those performed by dispatcher, radio operators, apparatus and equipment maintenance and repair workers, janitors, clerks and stenogra-

phers. Nor does the term include employees in correctional institutions who engage in building repair and maintenance, culinary services, teaching, or in psychological, medical and paramedical services. This is so even though such employees may, when assigned to correctional institutions, come into regular contact with the inmates in the performance of their duties.

§ 553.5 20-percent limitation on nonexempt work.

Employees engaged in fire protection or law enforcement activities, as described in §§ 553.3 and 553.4, may also engage in some nonexempt work which is not performed as an incident to or in conjunction with their firefighting activities. For example, those who work for forest conservation agencies may, during slack periods, plant trees and perform other conservation activities. The performance of such nonexempt work will not defeat either the section 7(k) or 13(b)(20) exemption unless it exceeds 20 percent of the total hours worked by the particular employee during the applicable work period.

§ 553.6 Public agency employees engaged in both fire protection and law enforcement activities.

Some public agencies have employees (sometimes referred to as public safety officers) who engage in both law enforcement activities and fire protection activities, depending upon the agency needs at the time. This dual assignment would not defeat either the section 7(k) or 13(b)(20) exemption, provided that each of the activities performed meets the appropriate tests set forth in §§ 553.3 (a), 553.4(a) and (e). This is so regardless of how the employees divide their time between the two types of activities. If, however, either the fire protection or law enforcement activities do not meet the tests of § 553.3(a) or §§ 553.4(a) and (e), and if such nonqualifying activities, standing alone or in conjunction with

some other nonexempt activity, exceed 20 percent of the employee's total hours of work in the work period, neither exemption would apply.

§ 553.7 Employees attending training facilities.

The attendance at a bona fide fire or police academy or other training facility, when required by the employing public agency, does not constitute engagement in exempt activities, unless the employee in question meets all the tests described in § 553.3(a) or § 553.4(a), as the case may be, in which event such training or further training would be incidental to, and thus part of, the employee's fire protection or law enforcement activities. Only the time spent in actual training or retraining constitutes compensable hours of work. All other time, such as that spent in studying and other personal pursuits, is not compensable hours of work even in situations where the employee is confined to campus or to barracks 24 hours a day. See § 553.14. Attendance at training facilities and schools, which is not required but which may incidentally improve the employee's performance of his or her regular tasks or prepare the employee for further advancement, need not be counted as working time even though the public agency may pay for all or part of such training.

§ 553.8 Ambulance and rescue service employees.

(a) Ambulance and rescue service employees of a public agency other than a fire protection or law enforcement agency may be treated as employees engaged in fire protection or law enforcement activities of the type contemplated by sections 7(k) and 13(b)(20) if their services are substantially related to firefighting or law enforcement activities in that (1) the ambulance and rescue service employees have received

special training in the rescue of fire and accident victims or firefighters injured in the performance of their firefighting duties, and (2) the ambulance and rescue service employees are regularly dispatched to fires, riots, natural disasters and accidents.

(b) Ambulance and rescue service employees of public agencies subject to the Act prior to the 1974 Amendments do not come within the section 7(k) or section 13(b)(20) exemptions, since it was not the purpose of those Amendments to deny the Act's protection of previously covered employees. This would include employees of public agencies engaged in the operation of a hospital; an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institutions; a school for mentally or physically handicapped or gifted children; an elementary or secondary school; an institution of higher education; a street, suburban, or interurban electric railway; or local trolley or motor bus carrier.

(c) Ambulance and rescue service employees of private organizations do not come within the section 7(k) or section 13(b)(20) exemptions even if their activities are substantially related to the fire protection and law enforcement activities performed by a public agency.

§ 553.9 Fire protection or law enforcement employees who perform unrelated work for their own agency or for another public agency or private employer.

(a) If an employee regularly engaged in exempt fire protection or law enforcement activities also works for another department or agency of the same State or political subdivision, such employee will lose the exemption if the other work is unrelated to fire protection or law enforcement activities. For example, if a city police officer also works

as a clerk in the city health department, which is clearly nonexempt work, the city could not claim the section 7(k) exemption for such employee and would have to pay overtime compensation for all hours worked for the two agencies in excess of 40 per week. See 29 CFR 778.117 for an explanation of how overtime compensation is computed in such a situation. If, however, such employee's other job for the city is also exempt work, as, for example lifeguarding at a seasonally operated city beach which work is exempt from both the Act's minimum wage and overtime provisions by virtue of section 13(a)(3), the city would be entitled to claim the lesser of the two exemptions which, in the example given would be the section 7(k) exemption, and it would have to pay overtime compensation only for the combined hours (if any) which are in excess of the employee's tour of duty.

(b) These same principles also apply where the fire protection or law enforcement employee works for another public or private employer who, although entirely separate from the employee's regular employer, is nonetheless a joint employer with the fire protection or law enforcement agency. Usually, of course, working for a separate employer does not affect the employee's status as an employee engaged in fire protection or law enforcement activities or the employing agency's right to claim the section 7(k) or 13(b)(20) exemption. In some limited circumstances, however, the relationship between the fire protection or law enforcement agency and the other employer is so closely related that they must be treated as joint employers. Such a joint employment relationship exists where the work done by the employee simultaneously benefits both employers and where it is done pursuant to an arrangement between the employers to

share or interchange employees, or where one employer acts directly or indirectly in the interest of the other employer in relation to the same employee, or where the employers are so closely associated that they share control of the employee, directly or indirectly. See 29 CFR Part 791.

(c) To illustrate, if a police officer independently finds after-hours employment as a repair mechanic in a gas station or as a security guard in a department store, there would be no joint employment relationship between the police department and the second employer. This would be so even if the police officer wore his or her uniform at the second job and even if the police department engaged in such "brokering" functions as maintaining a list of officers available for extra outside work and referring employment requests to such officers. Nor would it matter whether the police department also established a wage scale for such extra outside work and approved it so as to avoid any conflict of interest problem. On the other hand, if the second employer is required by local ordinance or otherwise to hire a police officer to control crowds at a stadium or to direct traffic at a sports arena or during a parade, such employment benefits both the police department and the second employer, and, since both act in the interest of the other, a joint employment relationship is created.

§ 553.10 Mutual aid.

If employees engaged in fire protection activities voluntarily respond to a call for aid from a neighboring jurisdiction, they are volunteers in rendering such aid and their employer is not required to compensate them for the time spent in the neighboring jurisdiction. See § 553.10. If, however, the employees respond to such a call because their employer has a mutual aid agreement with a neighboring jurisdiction or if the employees are directed by their agency to respond, all hours worked by these employees in rendering such aid must be added to their regular hours of work for purposes of the section 7(k) exemption.

§ 553.11 Fire protection and law enforcement volunteers.

(a) Individuals who volunteer to perform fire protection or law enforcement activities, usually on a part-time basis and as a public service, are not considered to be employees of the public agency which receives their services. Such individuals do not lose their volunteer status because their tuition may have been paid or they may have been reimbursed for attending special classes or other training to learn about fire protection or law enforcement or because they are reimbursed for approximate out-of-pocket expenses incurred incidental to answering a call or to the cost of replacing clothing or other items of equipment which may have been consumed or damaged in responding to a call. Nor is the volunteer status of such individuals lost where the only material recognition afforded them is the holding of an annual party, the furnishing of a uniform and related equipment, or their inclusion in a retirement or relief fund, a workman's compensation plan or a life or health insurance program, or the payment of a nominal sum on a per call or other basis which may either be retained, in whole or in part, by the volunteer or donated to finance various social activities conducted by or under the auspices of the agency. Payments which average $2.50 per call will be considered nominal. Payments in excess of this amount may also qualify as nominal, depending upon the distances which must be traveled and other expenses incurred by the volunteer. For purposes of this paragraph, it is not necessary for the

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agency to maintain an exact record of expenses.

(b) Where, however, individuals engaged in fire protection or law enforcement activities receive more than a nominal amount or payment on a basis which does not reasonably approximate the expenses incurred by them, they are employees rather than volunteers and must be paid in accordance with the Act's requirements.

(c) Volunteers engaged in fire protection or law enforcement activities may include individuals who are employed in some other capacity by the same public agency. For example, a civilian PBX operator of a public agency engaged in law enforcement activities may also be a volunteer member of the local police reserve force. Similarly, an employee of a village Department of Parks and Recreation may serve as a volunteer firefighter in his or her local community.

(d) Police officers or firefighters of one jurisdiction may engage in fire protection or law enforcement activities on a voluntary basis for another jurisdiction where there is no mutual aid agreement or other relationship between the two jurisdictions. Such employees cannot, however, perform fire protection or law enforcement activities on a voluntary basis for their own agency, although they can engage in other activities not directly related to these primary functions. For example, a paramedic employed by a city fire department could volunteer to give a course in first aid at the city hospital and a police officer could volunteer to counsel young juveniles who are members of a boy's club or other similar organizations.

Rules for Determining the Tour of Duty, Work Period and Compensable Hours of Work

§ 553.12 General statement.

(a) In extending the Act's coverage to public agency employees engaged in fire protection and law enforcement activities, Congress, recognizing the uniqueness of these activities, established section 7(k) which permits the computation of hours worked on the basis of a work period (which can be longer than a workweek) and which bases the overtime requirements on a work period concept. In adding this provision, Congress made it clear that some adjustment would have to be made in the usual rules for determining compensable hours of work (Conf. Rept. 93-953, p. 27) and where the employer elects section 7(k), these rules must be used for purpose of both the Act's minimum wage and overtime requirements.

(b) If, however, any public agency chooses not to claim the partial overtime exemption provided in section 7(k), but elects to pay overtime compensation as required by section 7(a), it need not concern itself with the "tour of duty" or "work period" discussion which follows or with the special rules relating to the determination of what constitutes compensable hours of work since, in that event, overtime would be payable on a workweek basis and the regular method of computing "hours worked" as set forth in 29 CFR Part 785 would apply. Such an agency would not, however, be able to take advantage of the special provisions of Part 553 relating to the balancing of hours over an entire work period, trading time and early relief.

§ 553.13 Tour of duty.

The term "tour of duty," as used in section 7(k), means the period during which an employee is on duty. It may be a scheduled or unscheduled period. Scheduled periods refer to shifts, i.e., the period of time which elapses between scheduled arrival and departure times, or to scheduled periods outside the shift,

as in the case of a special detail involving crowd control during a parade or other such event. Unscheduled periods refer to time spent in court by police officers, time spent handling emergency situations, or time spent after a shift in order to complete required work. When an employee actually works fewer hours than those scheduled, the employee's tour of duty is reduced accordingly. Nothing in section 7(k) precludes employers (acting pursuant to collective bargaining agreements or in accordance with their own authority) from establishing new tours of duty for their employees, provided, however, that the change is intended to be permanent at the time that it is made.

§ 553.14 General rules for determining compensable hours of work.

(a) Compensable hours of work generally include all of that time during which an employee is on duty or on the employer's premises or at a prescribed workplace, as well as all other time during which the employee is suffered or permitted to work for the employer. Such hours thus include all pre-shift and post-shift activities which are an integral part of the employee's principal activity or which are closely related and indispensable to its performance, such as attending roll call, writing up and completing reports or tickets, and washing and re-racking fire hose. It also includes time which an employee spends in attending required training classes. See § 553.7. Time spent away from the employer's premises under conditions so circumscribed that they restrict the employee from effectively using the time for personal pursuits, also constitutes compensable hours of work. For example, a police officer who is required to remain at home until summoned to testify in a pending court case and who must be in a constant state of instant readiness, is engaged in

compensable hours of work. On the other hand, employees who are confined to barracks while attending police academies are not on duty during those times when they are not in class or at a training session since they are free to use such time for personal pursuits. This would also be true in a forest fire situation where employees, who have been relieved from duty and transported away from the fire line, are, for all practical purposes, required to remain at the fire camp because their homes are too far distant for commuting purposes. Also, a police officer who has completed his or her tour of duty but who is given a patrol car to drive home and use on private business, is not working simply because the radio must be left on so that the officer can respond to emergency calls. Of course, the time spent in responding to such calls would be compensable, except in those instances where it is miniscule and cannot, as an administrative matter, be recorded for payroll purposes.

(b) Additional examples of compensable and noncompensable hours of work are set forth in 29 CFR Part 785 which is fully applicable to employees for whom the section 7(k) exemption is claimed except to the extent that it has been modified below in § 553.15.

§ 553.15 Sleeping and meal time as compensable hours of work.

(a) Where the employer has elected to use the section 7(k) exemption, sleep and meal time cannot be excluded from compensable hours of work where (1) the employee is on duty for less than 24 hours, which is the general rule applicable to all employees (29 CFR 785.21) and (2) where the employee is on duty for exactly 24 hours, which represents a departure from 29 CFR 785.21.

(b) Sleep and meal time may, however, be excluded in the case of fire pro-

tection or law enforcement employees who are on duty for more than 24 hours, but only if there is an express or implied agreement between the employer and the employee to exclude such time. In the absence of any such agreement, sleep and meal time will constitute hours of work. If, on the other hand, the agreement provides for the exclusion of sleep time the amount of such time shall, in no event, exceed 8 hours, in a 24-hour period, which is also the amount of time permitted when the agreement fails to specify the duration of sleep time. If such sleep time is interrupted by a call to duty, the interruption must be counted as hours worked, and if the period is interrupted to such an extent that the employee cannot get a reasonable night's sleep (which, for enforcement purposes, means at least 5 hours), the entire time must be counted as hours of work.

§ 553.16 Work period.

(a) As used in section 7(k), the term "work period" refers to any established and regularly recurring period of work which, under the terms of the Act and legislative history, cannot be less than 7 consecutive days nor more than 28 consecutive days. Except for this limitation, the work period can be of any length, and it need not coincide with the pay period or with a particular day of the week or hour of the day. Once the beginning time of an employee's work period is established, however, it remains fixed regardless of how many hours are worked within that period. The beginning of the work period, may, of course, be changed, provided that the change is intended to be permanent at the time that it is made.

(b) An employer may have one work period applicable to all of its employees, or different work periods for different employees or groups of employees. Prior

approval from the Wage and Hour Division is not required. The employer must, however, make some notation in its records which shows the work period for each employee and which indicates the length of that period and its starting time.

(c) For those employees who have a work period of at least 7 but less than 28 consecutive days, no overtime compensation is required until the ratio between the number of days in the work period and the hours worked during such work period exceeds the ratio between a work period of 28 days and 240 hours, at which point all additional hours are paid for at one and one-half times the employee's regular rate of pay.

(d) The ratio of 240 hours to 28 days is 8.57143 hours per day (8.57 rounded). Accordingly, overtime compensation at a rate of not less than one and one-half times the employee's regular rate of pay must be paid during calendar year 1975 for all hours worked in excess of the following maximum hours standards:

Work period (days):	*Maximum hours standard*
28	240
27	231
26	223
25	214
24	206
23	197
22	189
21	180
20	171
19	163
18	154
17	146
16	137
15	129
14	120
13	111
12	103
11	94
10	86
9	77
8	69
7	60

§ 553.17 Early relief.

It is a common practice among employees engaged in fire protection activities to relieve employees on the previous shift or tour of duty prior to the scheduled starting time. Such early relief may occur pursuant to employee agreement, either expressed or implied. This practice will not have the effect of increasing the number of compensable hours of work where it is voluntary on the part of the employees and does not result, over a period of time, in their failure to receive proper compensation for all hours actually worked. On the other hand, if the practice is required by the employer the time involved must be added to the employee's tour of duty and treated as compensable time.

§ 553.18 Trading time.

Another common practice or agreement among employees engaged in fire protection or law enforcement activities is that of substituting for one another on regularly scheduled tours of duty (or for some part thereof) in order to permit an employee to absent himself or herself from work to attend to purely personal pursuits. This practice is commonly referred to as "trading time." Although the usual rules for determining hours of work would require that the additional hours worked by the substituting employee be counted in computing his or her total hours of work, the legislative history makes it clear that Congress intended the continued use of "trading time" "both within the tour of duty cycle • • • and from one cycle to another within the calendar or fiscal year without the employer being subject to [additional overtime compensation] by virtue of the voluntary trading of time by employees" (Congressional Record, March 28, 1974, Page S 4692). Accordingly, the practice of "trading time" will be deemed to have no effect on hours of work if the following criteria are met: (a) The trading of time is done voluntarily by the employees participating in the program and not at the behest of the employer; (b) the reason for trading time is due, not to the employer's business operations, but to the employee's desire or need to attend to personal matter; (c) a record is maintained by the employer of all time traded by his employees; (d) the period during which time is traded and paid back does not exceed 12 months.

§ 553.19 Time off for excess hours or so-called "comp time."

(a) As a general rule, all overtime hours must be paid for in cash and not in time off. Section 7(k) creates a partial exception to this general rule by allowing employers to balance the employee's hours over a work period, which, as indicated in § 553.16, may be longer than a workweek, and to pay the overtime compensation required by the Act only if the employee's hours exceed the total number of hours established by section 7(k) for that particular work period. Thus, for example, if the duration of the employee's work period is 28 consecutive days, and he or she works 80 hours in the first week, but only 60 in the second week and 50 in each of the next 2 weeks, no additional overtime compensation would be required, since the total number of hours worked does not exceed 240. Of course, there might be a State law requiring overtime compensation at some earlier point (e.g., for any hours worked in excess of 40 in a week), but that obligation could be met with "comp time," if comp time is permissible under State law and if the wages paid to the employee for all hours worked during the entire 28-day tour of duty equal at least the minimum wage set forth in section

6(b) of the Act (29 U.S.C. 206(b)). Similarly, an employee whose work period is 1 week could be paid in "comp time" for all excess hours up to 60, provided that comp time is a permissible form of payment under State law and provided, also, that the wages paid to the employee equal at least the statutory minimum wage. Such "comp time" could be taken at any time authorized by state law or local ordinance.

(b) If the employee in either of the examples given above works more than the stated number of hours for a 7-day or 28-day work period, overtime compensation must be paid at one and one-half times the employee's regular rate. In computing the employee's regular rate, the cash equivalent of any comp time must be included. See also § 553.20.

§ 553.20 The "regular rate".

The rules for computing an employee's "regular rate," for purposes of the Act's overtime requirements, are set forth in 29 CFR Part 778. These rules are fully applicable to employees for whom the section 7(k) exemption is claimed, except that wherever the word "workweek" is used the word "work period" should be substituted.

§ 553.21 Records to be kept.

The recordkeeping requirements of the Act are set forth in 29 CFR Part 516. These requirements are applicable to public agencies engaged in fire protection and law enforcement activities, except that where section 7(k) is claimed, the records for those employees can be kept on a work period, instead of a workweek, basis. In addition, the records must show, as indicated in § 553.16(b), the work period for each employee.

Signed at Washington, D.C. this 18th day of December 1974.

BETTY SOUTHARD MURPHY,
Administrator.

[FR Doc.74-29843 Filed 12-19-74;8:45 am]

Affidavit of Jack I. Karlin, Dec. 27, 1974
(in Support of Defendant's Motion to Dismiss)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE NATIONAL LEAGUE OF CITIES, et al.,	)	
Plaintiffs	)	
v.	)	Civil Action
	)	No. 74-1812
THE HONORABLE PETER J. BRENNAN, Secretary of Labor,	)	
Defendant	)	

AFFIDAVIT

District of Columbia) SS:

Jack I. Karlin, being duly sworn, deposes and says:

1. I am Director, Division of Evaluation and Research, Office of Program Development and Accountability, Employment Standards Administration, U.S. Department of Labor.

2. As such I am responsible for all the long term research conducted by and for the Employment Standards Administration (ESA) including the development of all official coverage and impact estimates for the laws administered by ESA.

3. I have been employed by the Department of Labor since April 1940, preparing coverage estimates, estimates of impact and economic effects studies. For the past four

years I have been the Director of Evaluation and Research.

4. In connection with the issuance of 29 C.F.R. Part 553, I was asked to estimate the cost of the impact of the overtime provisions on State and local government public safety employees (policemen, firemen and security personnel in correctional institutions). The $27 million dollar estimate included in Part 553 as published in the Federal Register on December 20, 1974, 39 F.R. 44142, is based upon the following:

5. The March 1970 survey[1] of hours for State Government employees shows that 3.1 percent of public safety employees worked more than 48 hours in the survey week.[2] The survey of hours for local government employees shows that 11.0 percent of public safety employees worked more than 48 hours in the survey week.[3] Using recognized statistical methods, my staff extrapolated from the survey estimates of the percentage of such employees working over sixty hours and the average number of hours over 60 worked by them.

6. These estimates are:

(a) 0.4 percent of the State public safety employees worked over 60 hours per week, and averaged 6.9 hours per week over 60.

(b) 3.8 percent of the local government public safety employees worked over 60 hours per week, and averaged 11.6 hours per week over 60.

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[1] U.S. Department of Labor, Workplace Standards Administration, *Nonsupervisory Employees in State and Local Governments: Data Pertinent to an Evaluation of the Feasibility of Extending Minimum Wage and Overtime Protection under the Fair Labor Standards Act*, Washington, 1971. Defendant's deposition, Exhibit 37.

[2] Table 24, page A-28.

[3] Table 25, page A-29.

7. (a) These estimates are applied to the most recent (*i.e.*, as of October 1973) estimates of public safety employees who are covered by the 1974 Amendments and qualify for the 7(k) exemption. Thus, the 0.4 estimate is applied to 110,000, the total of State government employees. This yields a total of approximately 400 employees who worked more than 60 hours.

(b) The 3.8 estimate is applied to 477,000, the total of local government employees. This yields a total of approximately 18,000 employees who worked more than 60 hours.

8. (a) Multiplying 6.9 hours times 400 employees times 52 weeks equals approximately 144,000 hours over 60 per week worked by State public safety employees.

(b) Multiplying 11.6 hours times 18,000 employees times 52 weeks in the year equals approximately 10,860,000 hours over 60 per week worked by local government public safety employees.

9. The average hourly earnings was estimated to be approximately $5.00. This estimate was based on the March 1970 survey ($3.71) and updated to October 1974 according to the percentage change indicated in the monthly earnings reported in *Public Employment*, an annual Bureau of the Census publication, for police protection and local fire protection.

10. (a) Thus, the increased cost for overtime work (*i.e.*, the additional half-time premium) totals approximately $360,000 for State governments (144,000 hours times $2.50 per hour).

(b) The increased cost for local governments is $27,150,000 (10,860,000 hours times $2.50 per hour).

(c) The total of the above costs for State and local

governments as shown in this affidavit is $27,510,000.[4]

11. The cost was also estimated using the same technique on the combined State and local figures. This yielded a lower cost estimate. For the purpose of Part 553, the higher estimate was used.

/s/ Jack I. Karlin
Jack I. Karlin

Sworn and subscribed this 27th day of December, 1974.

/s/ Betty-Jo Boudine
Notary Public
My Commission Expires
November 30, 1978

[4] For the sake of simplification, more rounded figures were used in this affidavit. Using less rounded figures, the total was slightly lower.

Letter, William F. Danielson to Charles S. Rhyne, Dec. 24, 1974

CITY OF SACRAMENTO
DEPARTMENT OF PERSONNEL
201 NINTH STREET, ROOM 201
SACRAMENTO, CALIF. 70414

December 24, 1974

Mr. Charles S. Rhyne
Rhyne and Rhyne
400 Hill Building
839 – 17th Street, N.W.
Washington, D.C. 20006

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Dear Mr. Rhyne:

Your office has requested that I provide a written explanation of my estimate of $200,000,000 additional costs to state and local governments during the calendar year 1975 for fire protection services and further additional costs in 1976, 1977 and 1978 as a result of the imposition of the Fair Labor Standards Act.

Estimated 220,000 Firefighters in United States

Mr. Gerald M. Feder. representing the International Association of Fire Fighters, in his testimony before the Department of Labor on November 21, 1974, stated that there are 220,000 full-time firefighters in the United States at this time. I have no reason to doubt that Mr. Feder's estimate of the number of firefighters in the United States is not correct. Recent survey data from the International City Management Association and from several official governmental sources confirm this estimate, either directly or indirectly.

Estimate of 205,700 Fire Suppression Employees

Not all uniformed firefighters are assigned to fire suppression. In the report which I prepared for the League of California Cities entitled, "Fire Department Working Conditions and Salaries", in January 1965, most California municipal fire departments were surveyed in detail. In 1964 in California cities surveyed there were 14,256 firefighters, of whom 923 were assigned to a 40-hour work week, performing administration, fire prevention, or other such duties, and 13,333 were assigned to fire suppression. Therefore, 6.47% of California firefighters were assigned to a 40-hour work week; 93.53% of California firefighters were assigned to fire suppression duties. The ratio of about 6.5% of firefighters being assigned to other than fire suppression activities is still a good one to use. If anything, with the reductions in duty hours which have taken place in the last ten years, requiring greater staffing in fire suppression than in fire prevention, it is possible that the percentage of firefighters assigned to fire suppression may be as high as 94 or 95%. However, I have chosen to be conservative in this calculation in every respect. Therefore, my estimate is that 93.5% of the 220,000 firefighters in the United States are assigned to fire suppression duties, or 205,700 firefighters.

Average Fire Salary is $11,123 Per Year

The federal Equal Employment Opportunity Commission recently released a compilation of the survey information contained within the EEO-4 forms submitted by 5,007 state and local governments throughout the United States. This information was gathered as of October 1973. The EEOC survey divides state and local

governments into fifteen occupational categories, one of which is fire protection. The median salary of fire protection employees is shown to be $11,123 per year, which, as I recall, is the highest median salary for any occupational group in state and local governments. The 1973 median salary of $11,123 times the estimated 205,700 fire employees assigned to fire suppression equals an annual salary expenditure for fire suppression activities of about $2,288,001,100. Adjusting this figure by a conservative 6% to add salary adjustments received since October 1973 increases the estimate of 1974 fire suppression salaries to $2,425,280,000.

International City Management Association
Fire Scheduling Survey

In May and June 1974, I wrote the questions which were used in the special survey of fire duty hour scheduling practices in United States cities over 10,000 population conducted by the International City Management Association. I reviewed the tabulation of the results of that survey and included this information as a part of the statement on behalf of the National League of Cities and other public interest groups which was submitted to the Department of Labor on July 5, 1974. Subsequently, this data has been refined and published by the Urban Data Service of the International City Management Association in October 1974 in the publication I co-authored entitled, "Fire Duty Schedules and the Fair Labor Standards Act". Table 5a of the Urban Data Service report shows a total of 1,263 cities reporting information as to the average number of firefighters' hours on duty per week, averaged over a year. Table 5b shows that, of the 1,263 cities, 1,068

report having an average fire duty week of 60 hours or less. Therefore, 195 cities, or 15.43% of the total number of cities reporting, indicate having an average duty week above 60 hours. The size of the fire departments which reported average hours on duty per week above 60 is somewhat smaller than the cities reporting an average of 60 hours a week or less. It is estimated that the 15.43% of cities represent at least 10% of the total fire suppression payroll. Therefore, 10% of the fire suppression payroll is $228,800,000. Using unpublished data of the array of duty weeks reported by cities above an average of 60 per week, the mean average duty week for the group of 195 cities is 68.0. For the particular group of cities whose average fire duty week is above 60, it will be necessary to reduce the hours on duty to 60 or less commencing January 1, 1975, to avoid the penalties imposed by the Fair Labor Standards Act. The reduction from an average of 68 to 60 is a reduction of 8 hours, equivalent to an average increase of 13.33% in fire suppression payroll costs. *Therefore, the 13.33% increase in the fire suppression payroll costs in cities with average fire duty schedules of over 60 per week is estimated to be a minimum of $30,499,000 ($228,800,000 x 13.33%).*

Additional Costs Caused by Fire
Duty Cycle vs. Work Period

The ICMA survey shows that less than half of the fire departments in the United States presently have fire duty cycles which fit immediately between 7 and 28 days. Forty-one percent (41%) of the cities have fire duty cycles ranging from 2 to 6 days. Nine and one-half percent (9.5%) have reported fire duty cycles in excess of 28 days.

The 41% of the cities which have fire duty cycles of less than 7 days will be able to declare a work period of between 7 and 28 days. However, it is difficult to estimate the additional costs to this particular group of cities. Some of the problems involved in estimating these costs are that there are three time cycles which interact for employees engaged in fire protection activities pursuant to the Fair Labor Standards Act:

1. The length of the *work period* to be declared;
2. The length of the *pay period* used by the governmental agency;
3. The length of the *fire duty cycle*.

Previously the Department of Labor has had to contend with only two time cycles: (1) the *work week* (*work period*) of 7 days (and for certain instititional and hospital employees which may be 14 days) and (2) the *pay period* of the employer. The problems of dealing with the third time cycle grow at least exponentially with the introduction of the *fire duty cycle* and will create hidden liability which many cities will not recognize until too late.

Almost all of the 205,700 fire suppression personnel have been paid on a salaried basis until now. For almost all firefighters, salaries have been expressed in terms of monthly or annual amounts. Relatively few firefighters have been paid by the hour. The basic concept of the Fair Labor Standards Act requires that persons covered under the Act be paid by the hour. It is the general practice of almost all private employers to pay employees covered by the Fair Labor Standards Act by the hour. The Fair Labor Standards Act will force state and local governments to convert, similarly, all covered employees to be paid by the hour in order to fully comply with all

of the provisions of the Code of Federal Regulations. (This is not mandated by the law, but is a practical necessity.) Until firefighter pay is converted to a unit of pay per hour, governmental agencies will be especially vulnerable to liabilities incurred while firefighters continue to be paid on the pre-FLSA salaried basis.

In the first year, the impact of the new law and its many regulations unquestionably will expose to liability a great many cities and other state and local public jurisdictions which have not had the time to understand fully the implications of the new law and its accompanying regulations. I have only received the final regulation 29 CFR 553 today, December 24. I have not yet had the opportunity to read and fully understand it. Relatively few of the public agencies in the United States will have had an opportunity prior to the effective date of January 1, 1975, to receive the final regulation and to comprehend its meaning and to take appropriate steps. Unquestionably a great many cities and other public agencies will not have taken the steps necessary to declare a work period and otherwise utilize the partial exemption under the 7(k) provision of the Act. Failure to utilize the 7(k) exemption will render cities liable to pay time and a half over 40 hours within 7 days to firefighters and to law enforcement officers. This liability will be very substantial and is difficult to estimate. However, I will try to do so.

Over half of United States cities (50.5%) report using fire duty cycles which are less than 7 days or greater than 28 days in length. In addition, as is indicated on page 4 of the Urban Data Service report, "it appears from the returns that about 15% to 20% of the fire schedules may use some form of pay back or Kelly Day. If this estimate

is correct, then the number of cities with fire duty cycles greater than 28 days is probably at least double that reported." This means that at least 60% of American municipal fire departments presently have fire suppression duty cycles which are either shorter or longer than the Section 7(k) work period options of 7 up to 28 days.

In fire departments with fire duty cycles longer than 28 days, it almost always will be necessary to revise the duty schedule to avoid paying substantial unnecessary overtime (even though no additional fire hours will be worked). In all fire departments which use "paybacks", it will be necessary to immediately cease this practice and revise the fire duty schedule. In many fire departments which use "Kelly Days", it will be necessary to revise the fire duty schedule in order to avoid unnecessary fire overtime. In departments which have practiced different types of scheduling during the summer than the rest of the year, and have averaged hours over a year, it will be necessary to change scheduling practices.

Many fire departments which have average duty hour schedules of 60 or less have assumed that no further action is necessary on their part because of the new law. It is not realized that although a fire department may have a 48-hour average duty week, that where the fire duty cycle is longer than 28 days, the city may be vulnerable to paying substantial unnecessary fire overtime.

I estimate that many of the 60% of the cities which have fire duty cycles which are less than 7 days in length or greater than 28 days will either fail to declare a work period for employees engaged in fire protection activities, or will fail to revise the fire duty cycle to protect the city

(or be precluded from doing so by state law), or will fail to declare a work period for fire employees which will adequately protect the city from payment of unnecessary fire overtime.

We are considering the extra additional costs to the cities for "employees engaged in fire protection" pursuant to the Fair Labor Standards Act regulations. The payroll of these cities (exclusive of the 10% for fire departments averaging over 60 hours per week) is estimated to be (60% of 90% of total payroll) 60% x $2,182,752,000 = $1,309,651,200.

Section 7(k) of the Act requires that two conditions be met in order for a public agency to qualify for the partial exemption: (1) a work period must be declared of between 7 and not to exceed 28 days; (2) during 1975, overtime at one and one-half must be paid for hours worked within the work period over a ratio of 60 hours to seven days. If a public agency does not meet both of these conditions, the 7(k) exemption does not apply, and Section 7(a) of the Act does apply. That is, the city is required to pay one and one-half in the work period for hours worked over 40 in seven days.

The most commonly used fire duty cycle in the nation is the average 56 hours duty week, in which a firefighter is on duty 24 hours and off duty 48 hours in every three-day cycle. In this instance, if a city would fail to declare a work period, the penalty would be that the salary of the fire employees would be considered to be applied to the first forty hours, and the city would be required to pay overtime at time and one-half for 16 hours. At time and one-half for 16 hours, the city would be liable to pay 24 hours extra on top of salary figured on a regular rate based on 40 hours. This is equivalent to

a 60% liability, at the least. If double damages are assessed, the liability could be 120% of payroll for all work periods in which this would occur.

If a city with a 24-hours-on-duty, 48-hours-off-duty (56 hours average) fire duty cycle should mistakenly declare a work period of 7 days, the penalty would be almost as costly as if the city declared *no* work period. On this arrangement, a city would have the following experience:

1st week: X O O X O O X 72 hours (12 hrs. overtime over 60 at 1½ = 18 hrs)

2nd week: O O X O O X O 48 hours (no overtime penalty)

3rd week: O X O O X O O 48 hours (no overtime penalty)

The city would have to pay overtime for 18 hours every third week, even though no overtime was worked. If the city failed to pay overtime in any week when 72 hours were worked, then the city would be liable to pay 32 hours of overtime at time and one-half equal to 48 hours of additional pay every three weeks. The exposure of 48 hours for every 168 hours worked is equivalent to 28.57% liability of total fire suppression payroll.

Liability exposure will vary from one community to another, but in all cases it will be substantial. In many cities, there will be a risk of exposure to overtime claims from firefighters which will be in excess of 100% of firefighter salary, even though no overtime is worked by firefighters.

It is a virtual certainty that where the liability may exist that claims will be filed sooner or later with the Department of Labor to collect.

Many cities will manage to avoid the booby traps which are set within the Fair Labor Standards Act, but some cities will fall victim to them. I have been receiving telephone calls and correspondence from throughout the United States for several months now from fire chiefs, city managers, personnel directors, mayors, and other officials concerned with the law. The state of knowledge of the Act is minimal at this time among officials who will be responsible for administering the Act and its provisions.

I estimate that at least 25% of United States cities will fall victim to the Fair Labor Standards Act and become liable to pay for fire overtime, although no overtime is worked, during 1975. Probably these claims will not surface until the latter part of 1975 and, therefore, these cities will be confronted with substantial claims for fire overtime either during or by the end of 1975. I do not know, and cannot know, the extent to which cities will be assessed double damages for such overtime claims.

Using conservative assumptions, it is likely that 25% of the cities with fire duty cycles less than 7 days or greater than 28 days will, during 1975, incur fire overtime liability for fire suppression ranging from a few days to the entire year. I estimate that potential additional penalties will be about 40% of fire payroll for these cities. Estimated cost, therefore, is $130,900,000 (25% of $1,309,651,200 = $327,250,000 x .40 = $130,900,000).

A similar liability exposure exists for the cities which do have fire duty cycles of between 7 and 28 days. These cities do not have quite the problems in adjusting fire schedules nor the hazards in the same degree as the cities which have fire duty cycles of less than 7 or greater than 28 days. Therefore, the risk factor is less. The annual fire

payroll for these cities is (40% of 90% of total payroll) 40% of $2,182,752,000 = $873,100,800. If only 10% of these cities fail to declare a work period, or declare an erroneous work period, the payroll exposed to liability will be: 10% x $873,100,800 – $87,310,080. Again, if exposed, the penalty will be probably about 40%. Therefore, estimated overtime penalty in 1975 for cities with these fire duty cycles is: 40% x $87,310,080 = $34,924,030.

Summary Estimated 1975 Costs

In summary, estimated 1975 costs to state and local public agencies for fire protection caused by the Fair Labor Standards Act will be:

1. Reduction to 60 hour maximum fire duty schedule . . . . . $ 30,499,000
2. Costs to jurisdictions with fire duty cycles less than 7 or greater than 28 days 130,900,000
3. Costs to jurisdictions with fire duty cycles of between 7 days and 28 days 34,924,000
4. Extra costs related to joint employment provisions of the Act 10,000,000

$206,323,000

There are so many ways for a public agency to trip and incur unanticipated costs that I am sure that the above estimate will be too low for 1975. The estimate means that the overall fire suppression payroll in the United States would be raised by about 9%. However, this increase would not be added equally to each public agency. Some fire departments will incur no additional costs because of Fair Labor Standards Act; some will incur such severe additional costs as to require doubling of payrolls or halving of fire services.

All of the above discussion is related to the calendar year 1975. For calendar years 1976, 1977 and 1978 different cost estimates must be made.

Cost Estimates: 1976, 1977, 1978

By the end of the year 1975, most public jurisdictions will have discovered and corrected most or all of the "work period" problems through hard experience with the new and unfamiliar law. Therefore, no work period costs are estimated for this reason after 1975.

1976

In 1976, overtime will be required to be paid for hours worked in excess of 58 in 7 days within the work period. Using the fixed post manning concept, it is not possible to construct a 58-hour average fire duty schedule within a 7-day to 28-day work period. The nation's fire departments will be required to lower hours to 56 therefore, rather than an impossible 58-hour figure.

This will require reduction from 60 hours to 56 hours for all fire departments at 60 hours in 1975, plus reduction of hours for any other departments now between 56 and 60 (such as the City of Sacramento) during 1975.

To reduce from 60 to 56 hours is equivalent to an additional cost of 7.14%. Applied to the larger base of 20% of payroll, this is equivalent to new costs of $2,288,000,000 x 20% - $457,600,000 (payroll understated because of no factor for salary increase or increase caused by 1975 FLSA compliance). $457,600,000 x 7.14% = $32,672,400 plus carryover cost of $30,499,000 from 1975 = $63,171,400 additional fire costs in 1976.

1977

The law requires overtime to be paid at time and one-half over 54 in 1977. This will require about 80% of fire payroll to be reduced by two hours from 56, equal to 3.7% increase:

$2,288,000,000 x 80% = $1,830,400,000	
x 3.7% =	$ 67,724,900
Plus additional carryover from 1975 and 1976	63,171,400
	$130,896,300

1978

The crushing costs of the Act are likely to fall in 1978, three years hence. If the Secretary of Labor would decree that overtime hours at time and one-half will be required at less than 54, as seems probable, the following costs are possible:

Over 48 hours:

$2,288,000,000 x 90% = $2,059,200,000	
x 12.5% =	$257,400,000
Plus carryover 1975,1976,1977	130,896,000
	$388,296,000

Over 46 hours:

$2,059,200,000 x 17.39% =	$358,094,900
Plus carryover 1975, 1976, 1977	130,896,000
	$488,990,000

Over 44 hours:

$2,059,200,000 x 22.72% =	$467,850,240
Plus carryover 1975, 1976, 1977	130,896,000
	$598,746,000

Summary of Estimated Costs:

1975	$206,323,000
1976	63,171,400
1977	130,896,300
1978 (over 44 est.)	598,746,000
	$999,136,000

As none of the above estimates include any factors for salary increases, or increased size of fire suppression forces, the estimates, in fact, should exceed one billion dollars over the four-year cumulative period to fully experience the 1974 Amendments of the Fair Labor Standards Act for employees engaged in fire protection activities.

I wish to reiterate that I have not had a full opportunity to read carefully the final regulation 29 CFR 553 which was issued in the Federal Register 20 December 1974, which I have just received today. There may be additional cost factors contained in the regulation (such as the reduction in hours in the work period for 27 days being changed to required overtime over 231 hours instead of 232, as appeared in the preliminary regulation) which may have some impact. I believe that the $27 million cost impact estimate contained in the preamble of the final 29 CFR 553 regulation is extremely underestimated, as I have made no estimates in this letter of the additional costs which will be required for the hundreds of thousands of part-paid volunteer firefighters, nor of the costs to law enforcement agencies throughout the United States, as a result of the Fair Labor Standards Act. These costs also are substantial, and would be in addition to the fire suppression estimates presented here.

Very truly yours,

/s/ William F. Danielson
William F. Danielson
Director of Personnel

Supplementary Affidavit of Jack I. Karlin, Dec. 30, 1974

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE NATIONAL LEAGUE OF CITIES, et al.,	)	
Plaintiffs,	)	
v.	)	Civil Action
	)	No. 74-1812
THE HONORABLE PETER J. BRENNAN, Secretary of Labor,	)	
Defendant.	)	

SUPPLEMENTARY AFFIDAVIT

District of Columbia) SS:

JACK I. KARLIN, being duly sworn, deposes and says:

1. This supplements my affidavit of December 27, 1974, which has been filed in this action.

2. On December 27, 1974, I received a copy of a letter from William F. Danielson to Charles S. Rhyne, dated December 24, 1974, which purports to explain Mr. Danielson's "estimate of $200,000,000 additional costs to state and local governments during the calendar year 1975 for fire protection services and further additional costs in 1976, 1977 and 1978 as a result of the imposition of the Fair Labor Standards Act" (page 1). Mr. Danielson's letter estimates "1975 costs to state and

local public agencies for fire protection caused by the Fair Labor Standards Act will be" $206,323,000 (page 6).

3. The total of $206,323,000 includes $165,824,000 (items 2 and 3 at page 6) which I consider too speculative to be statistically valid. This amount is based upon the assumption that a substantial percentage of the cities whose tours of duty for firefighters do not exceed the maximum hours permitted without premium pay (an average of 60 hours per week) will mistakenly fail to elect the provisions of the Fair Labor Standards Act which will permit them to avoid all overtime premium pay.

In my opinion it is too conjectural to assume that State and local public agencies will mistakenly overspend in the amount of $165,824,000 by failing to utilize the available provisions under the Act that would eliminate such overspending. This is particularly true in view of the fact that as long ago as June 1974 the International City Management Association issued a report (prepared by Mr. Danielson) which explained how public agencies can avoid unnecessary fire overtime, and this report was known to the National League of Cities in June of 1974 (Defendant's Deposition Exhibit 3).

4. The total of $206,323,000 also includes $10,000,000 (item 4 page 6) said to reflect "extra costs related to joint employment provisions of the Act." This $10,000,000 amount is not explained in the letter.

5. This leaves $30,499,000 (item 1 at page 6) which is said to relate to "Reduction to 60-hour maximum fire duty schedule." I am not aware of any articulated, specifically supported estimate filed in this case by plaintiffs that estimates any cost to State and local public agencies under the 60-hour maximum provisions for policemen and correctional employees. When this is considered, the $30,499,000, while larger than the $27,000,000 estimate made by the Department of Labor

as the cost of the overtime provisions pertaining to public safety employees, is of the same general order of magnitude as the Department of Labor's estimate.

6. Moreover, with further reference to the $30,499,000 estimate, I find a number of shortcomings in that amount. Succintly stating some of them in the interest of brevity, they are:

First. The total of 205,700 firefighters on page 1 and the median salary of $11,123 per year on page 2 do not appear adequately to take into account exempt executive, professional and administrative employees.

Second. The use of a median amount rather than a mean amount is not appropriate for the purpose of the letter.

Third. No basis is stated for the letter's estimate that the 15.43% of the cities reporting represent at least 10% of the total fire suppression payroll.

Fourth. The 13.33% figure on page 2, stated as representing the average increase in fire suppression payroll costs, does not seem to me to be supportable. For example: Let us suppose that a city, prior to the Amendments, paid its firefighters a salary of $272 per week regardless of hours worked. The Amendment's provision for premium pay would be satisfied by paying $288 for a 68-hour week. This represents $272 divided by 68, to obtain the hourly rate for that week ($4.00)

and $16.00 premium pay for overtime (8 hours times $2.00).[1] In this example, the percentage increase in cost is approximately 6% rather than 13.33%.

/s/ Jack I. Karlin
JACK I. KARLIN

Sworn to and subscribed before me this 30th day of December, 1974.

/s/ Joyce P. Burch
Notary Public

[Certificate of service omitted]

[1] This method cannot be used if the hourly rate for the week comes out less than the minimum wage.

Opinion and Order of District Court below, dismissing Complaint and denying Preliminary Injunction. Dec. 31, 1974

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 74-1812

THE NATIONAL LEAGUE OF CITIES,
an Illinois Corporation, on
behalf of its member cities,
1620 Eye Street, N.W.,
Washington, D.C. 20006,

THE NATIONAL GOVERNORS' CONFERENCE,
a District of Columbia Corporation,
on behalf of its members,
1150 Seventeenth Street, N.W.,
Washington, D.C. 20036,

The State of ARIZONA
N. Warner Lee, Attorney General
State Capitol
Phoenix, Arizona 85007

METROPOLITAN GOVERNMENT OF NASHVILLE
AND DAVIDSON COUNTY, Tennessee
Milton H. Sitton, Director of Law
204 Courthouse
Nashville, Tennessee 37201,

The City of SALT LAKE CITY, Utah
Roger F. Cutler, City Attorney
101 City and County Building
Salt Lake City, Utah 84114,

The City of LOMPOC, California
Alan Davidson, City Attorney
119 West Walnut Avenue
Lompoc, California 93436,

The City of CAPE GIRARDEAU, Missouri
Thomas Utterback, City Attorney
Office of the City Attorney
Cape Girardeau, Missouri 63701,

Plaintiffs,

and

The State of CALIFORNIA,
State Capitol,
Sacramento, California 95814

by and through

EVELLE J. YOUNGER,
Attorney General, on
behalf of the People of
the State of California,

RONALD REAGAN
Governor,

VERNE ORR
Director, Department of Finance,

JAMES G. STEARNS
Secretary, Agriculture and Services Agency,

FRANK J. WALTON
Secretary, Business and Transportation Agency,

NORMAN B. LIVERMORE, JR.
Secretary, Resources Agency,

JAMES E. JENKINS
Secretary, Health and Welfare Agency,

Plaintiffs-Intervenors,

and

The State of INDIANA
Theodore L. Sendak, Attorney General
State Capitol
Indianapolis, Indiana,

The State of IOWA
Richard C. Turner, Attorney General
State Capitol
Des Moines, Iowa 50319,

The State of MARYLAND
Francis B. Burch, Attorney General
One South Calvert Street
Baltimore, Maryland 21202,

The State of MASSACHUSETTS
Robert H. Quinn, Attorney General
State House
Boston, Massachusetts 02133,

The State of MISSISSIPPI
A. F. Summer, Attorney General
State Capitol
Jackson, Mississippi 39105,

The State of MISSOURI
John C. Danforth, Attorney General
Supreme Court Building
Jefferson Building, Missouri 65101,

The State of MONTANA
Robert L. Woodahl, Attorney General
State Capitol
Helena, Montana 59601,

The State of NEBRASKA
Clarence A. H. Meyer, Attorney General
State Capitol
Lincoln, Nebraska 65809,

The State of NEVADA
Robert List, Attorney General
Supreme Court Building
Carson City, Nevada 89701,

The State of NEW HAMPSHIRE
Warren B. Rudman, Attorney General
State House Annex
Concord, New Hampshire 03301,

The State of OKLAHOMA
Larry D. Derryberry, Attorney General
112 State Capitol
Oklahoma City, Oklahoma 73105,

The State of OREGON
R. Lee Johnson, Attorney General
100 State Office Building
Salem, Oregon 97310,

The State of SOUTH CAROLINA
Daniel R. McLeod, Attorney General
Hampton Office Building
Columbia, South Carolina 29201

The State of SOUTH DAKOTA
Kermit A. Sande, Attorney General
State Capitol
Pierre, South Dakota 57501,

The State of TEXAS
John L. Hill, Attorney General
Supreme Court Building
Austin, Texas 78711,

The State of UTAH
Vernon B. Romney, Attorney General
State Capitol
Salt Lake City, Utah 84114,

The State of WASHINGTON
Slade Gorton, Attorney General,
Temple of Justice
Olympia, Washington 98504,

Plaintiffs-Intervenors,

v.

The Honorable PETER J. BRENNAN
Secretary of Labor
of the United States,

Defendant.

Per Curiam:

Petitioners, individual cities and states, the National League of Cities, and the National Governors' Conference, challenge the 1974 amendments to the Fair Labor Standards Act (FLSA), Public Law 93-259, 88 Stat. 55, amending 29 U.S.C. §§ 201 *et seq.* (1970), as beyond the power of Congress under the Commerce Clause in that they purport to extend the coverage of the FLSA to nonsupervisory state and municipal employees, including police and firemen. The Amendments generally went into effect on May 1, 1974; provisions relating to overtime pay of police and firemen become effective on January 1, 1975. Plaintiffs seek a declaratory judgment and temporary and permanent injunctive relief. Defendant opposed a temporary injunction, and moved to dismiss the action for failure to state a claim upon

which relief can be granted. A three-judge district court was duly convened. We grant defendant's motion to dismiss the complaint.

Although plaintiffs have raised a difficult and substantial question of law, we feel that our decision is controlled by the decision of the Supreme Court in *Maryland v. Wirtz*, 392 U.S. 183 (1968).[1] Upholding the constitutionality of an earlier extension of the FLSA to cover employees of state-operated schools and hospitals against an attack similar to that lodged here, Justice Harlan, writing for the court, found a sufficient and independent rational relationship of the provisions of the Act to interstate commerce in that state hospitals and schools were significant purchasers of out-of-state goods and that strikes and work stoppages involving their employees would consequently interrupt and burden the flow of goods across state lines. 392 U.S. at 194-95. Since it is uncontested that the state and municipal institutions whose employees are reached for the first time by the 1974 Amendments do make substantial purchases in interstate commerce of equipment and other goods, the decision in *Wirtz* disposes of this case.

Although the theory discribed above was an explicitly independent ground for the decision, there is language in

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[1] In this opinion we have not addressed ourselves to any issue concerning the regulations and rulings issued by defendant under the 1974 amendments, either as to procedure followed, or as to substantive compliance with the Act. These issues were not the core of the complaint filed, and the contentions may be presented by plaintiffs either by way of defense, or in actions for declaratory relief. *See* National Automatic Laundry and Cleaning Council v. Shultz, 143 U.S. App. D.C. 274, 443 F .2d 689 (1971).

the opinion that stresses that the state competes with private institutions which also operate schools and hospitals.[2] The institutions whose employees are in question here perform governmental functions, not seriously in competition with private industry. Moreover, there is evidence that the impact of the 1974 Amendments, in terms of confusing and complex regulations and an enormous fiscal burden on the states, is so extensive that it may seriously affect the structuring of state and municipal governmental activities by reducing flexibility to adapt to local and special circumstances, as through compensatory time off arrangements, rather than time and half overtime pay, and through other local governmental agreements.[3]

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[2] *See, e.g.*, "If a State is engaging in economic activities that are validly regulated by the Federal Government when engaged in by private persons, the State too may be forced to conform its activities to federal regulation." 392 U.S. at 197.

[3] California, for example, has a mutual aid program, through which counties cooperate to provide aid in time of floods and other disasters. The municipalities and counties participate gratuitously, without reimbursement. Counsel for California fear that the overtime pay provisions of the Amendments will prove so burdensome that counties will be unwilling to continue to cooperate in this venture.

Also, compensatory time-off arrangements which allow for heavy working seasons during the summer, for forest fire fighters, or during the winter, for snow removal personnel, may be prohibited by the provisions requiring overtime payment. California, for example, represents that its forestry service employees are under special arrangements for the 5-8 month forest fire campaign program, which are dependent as a practical matter on a compensatory time off arrangement during the winter months. Salt Lake City fears it may not be able to continue its practice of working its snow removal employees some 7,000 hours in excess of 40 hours per week during the winter with an equal amount of time off during the summer, despite the apparent acceptability of this arrangement to both employer and employees.

Plaintiffs contend that the amendments will mean either increase in local government fiscal requirements, or reduction in services and personnel, with layoffs, or both, due to provisions in state and municipal constitutions, charters, statutes and ordinances, like those against deficit financing. Plaintiffs further contend that a large part of the budgets of state and local governments reflect costs of non-supervisory personnel, and that the budgeting processes currently under way indicate that the amendments may have the practical impact of a large scale reconstitution of tours of duty, without any factual predicate showing that there has been in the past any substantial degree of either widespread labor unrest curtailing flow of interstate commerce or substandard wage scales. They contend that the amendments here will intrude upon the state's performance of essential governmental functions far more than did those reviewed in *Wirtz*, although here, as there, the federal requirements are nominally limited to wage and hour regulations. We are troubled by these contentions, and consider that they are substantial and that it may well be that the Supreme Court will feel it appropriate to draw back from the far-reaching implications of *Wirtz*; but that is a decision that only the Supreme Court can make, and as a Federal district court we feel obliged to apply the *Wirtz* opinion as it stands.

If, as we must assume, the amendments are constitutional, a preliminary injunction would be inappropriate. We have prondered the possibility of relief pending appeal, to assure opportunity to litigate, but, apart from jurisdictional doubts, we apprehend that the only assistance available from such refief would be this, that states failing to comply with the new provisions

would not be exposed to the liquidated damages and double damage penalties provided for bad faith violations of the Act. However, we feel that since our opinion recognizes that plaintiffs have raised a substantial question regarding the amendments' constitutionality, this will be sufficient to indicate that the claim of the part of the cities and states that the Act cannot be constitutionally enforced has been raised in good faith.

Plaintiffs' request for declaratory and preliminary injunctive relief is denied. Defendant's motion for dismissal is hereby granted. Because the papers before us include depositions and affidavits, and they should be part of the record in the event of an appeal to the Supreme Court, our order dismissing the complaint will be entered under both Rule 12 and Rule 56 of the Federal Rules of Civil Procedure.

The foregoing will constitute our findings of fact and conclusions of law.

Accordingly, it is hereby ORDERED, pursuant to and in accordance with Rules 12 and 56 of the Federal Rules of Civil Procedure, that the complaint of the National League of Cities, et al., as amended December 31, 1974, and the complaint in intervention of the State of

California, be, and they hereby are, dismissed with prejudice.

/s/ Harold Leventhal
Harold Leventhal
United States Circuit Judge

/s/ Oliver Gasch
Oliver Gasch
United States District Judge

/s/ Barrington D. Parker
Barrington D. Parker
United States District Judge

December 31, 1974

Counsel for Plaintiffs:
Charles S. Rhyne
Rhyne & Rhyne
400 Hill Building
839 17th Street, N.W.
Washington, D.C. 20006

Counsel for Plaintiffs-Intervenors
The State of California et al.:
Talmadge R. Jones
Deputy Attorney General
of the State of California
555 Capitol Mall, Suite 550
Sacramento, California 95814

Counsel for Defendant:
Nathan Dodell
Assistant United States Attorney
Room 3427
United States District Courthouse
Washington, D.C. 20001